United States Circuit Court of Appeals

TENTH CIRCUIT.

No. 2697.

WALTER B. JOHNSON; T. R. HUSTED; B. A. WEST; CHARLES RIGGS; GEORGE GOFF; MIKE McGREW; LEWIS KOLB; J. M. GENTRY; and IVAN KENNEDY, APPELLANTS,

vs.

YELLOW CAB TRANSIT COMPANY, a corporation, APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA.

FILED FEBRUARY 18, 1943

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Pleas and proceedings in the United States Circuit Court of Appeals for the Tenth Circuit, at the March Term, 1943, of said Court, before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Alfred P. Murrah, Circuit Judges.

On the 13th day of February, A. D. 1943, a transcript of the record, pursuant to a notice of appeal, filed in the District Court of the United States for the Western District of Oklahoma, was filed in the office of the clerk of the United States Circuit Court of Appeals for the Tenth Circuit, in a certain cause wherein Walter B. Johnson et al. were appellants, and Yellow Cab Transit Company, a corporation, was appellee, which said transcript, as prepared and printed under the rules of the United States Circuit Court of Appeals for the Tenth Circuit, is in the words and figures following:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

No. 2697.

WALTER B. JOHNSON; T. R. HUSTED; B. A. WEST; CHARLES RIGGS; GEORGE GOFF; MIKE McGREW; LEWIS KOLB; J. M. GENTRY; and IVAN KENNEDY, APPELLANTS,

vs.

YELLOW CAB TRANSIT COMPANY, a corporation, APPELLEE.

Appellants' Statement of Points.

The appellants herein will rely upon the following points:

1. The shipment of liquor involved in said case was not moving in interstate commerce when seized by appellants.

2. Said shipment and the possession and transportation thereof were in violation of the laws of the State of Oklahoma.

3. Said shipment and the possession, transportation, delivery and distribution thereof were in violation of the laws of the United States relating to Fort Sill Military Reservation.

4. Said shipment and transportation thereof were in violation of the laws and public policy of the United States and appellee could not claim the protection of interstate commerce or the assistance of the courts of the United States in the recovery of said liquor.

MAC Q. WILLIAMSON,
Attorney General;
SAM H. LATTIMORE,
Assistant Attorney General,
Attorneys for Appellants.

Filed February 23, 1943. Robert B. Cartwright, Clerk.

Designation of Record.

The appellants hereby designate the following portions of the record to be printed:

1. Complaint.
2. Answer.
3. Stipulation.
4. Supplemental Stipulation.
5. Opinion.
6. Findings of Fact, Conclusions of Law and Decree.
7. Notice of Appeal.
8. Designation of the Record to be included on appeal.
9. Statement of Points on which appellants will rely.
10. Order joining additional parties appellant.

MAC Q. WILLIAMSON,
Attorney General;
SAM H. LATTIMORE,
Assistant Attorney General,
Attorneys for Appellants.

Service of copy of the above acknowledged this 18th day of February, 1943. Appellee waives time in which to suggest additional parts for printing and agrees that the record be printed as above set forth.

J. B. DUDLEY & DUKE DUVALL,
Attorneys for Appellee.

Filed February 23, 1943. Robert B. Cartwright, Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA.

PLEAS AND PROCEEDINGS BEFORE THE HONORABLE EDGAR S. VAUGHT, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA, PRESIDING IN THE FOLLOWING ENTITLED CAUSE:

YELLOW CAB TRANSIT COMPANY, a corporation,
PLAINTIFF,

No. 1145 vs. Civil

WALTER B. JOHNSON; T. R. HUSTED; B. A. WEST; CHARLES RIGGS; GEORGE GOFF; MIKE McGREW; LEWIS KOLB, DEFENDANTS.

Complaint.

1 Comes now the above named plaintiff, and for its cause of action against the above named defendants, states:

(1) That plaintiff is a corporation duly organized and existing under the laws of the State of Oklahoma, with its principal place of business at Oklahoma City therein; that the defendant Walter B. Johnson is the Commissioner of Public Safety of the State of Oklahoma; that the defendant T. R. Husted is the Superintendent of the Bureau of Identification and Investigation of the Department of Public Safety of the State of Oklahoma, and the defendants B. A. West and Charles Riggs are his Deputies; that the defendant George Goff is the Sheriff of Oklahoma County, Oklahoma, and the defendants Mike McGrew and Lewis Kolb are his Deputies.

(2) That plaintiff is now, and was at all times mentioned herein and for many years past, engaged in the business of
2 the transportation of commodities generally by motor vehicle in interstate and foreign commerce as a common carrier for hire, and operates in and through and serves the States of Kentucky, Indiana, Illinois, Missouri, Kansas, Oklahoma and Texas and the Fort Sill and other United States Military Reservations, under and by

virtue of authority granted to it by the Interstate Commerce Commission pursuant to the provisions of the Federal Motor Carrier Act of 1935, as amended, being Part II of the Interstate Commerce Act, 49 USCA, Chapter 8; that plaintiff is so authorized to serve the public in interstate commerce between East St. Louis, Illinois, St. Louis, Missouri, and Lawton, Oklahoma, and Fort Sill Military Reservation, U. S. A., via Oklahoma City; that among other commodities, plaintiff was and is authorized to transport wines and *spiritous* liquors, and has and had duly published and filed with the Interstate Commerce Commission its lawful tariffs quoting rates and charges for the shipment of said commodities over its line to the points and places it is authorized to serve.

(3) That on or about the 24th day of October, 1942, there was tendered by M. B. Gintz Company, as consignor, at East St. Louis, Illinois, to plaintiff, and accepted by it in the regular course of its business as a common carrier, a shipment consisting of 225 cases of wines and *spiritous* liquors, under a standard, uniform, straight bill of lading which is approved by the Interstate Commerce Commission, and upon which shipment the freight was prepaid, consigned to the F. A. S. Officers Club Mess at Fort Sill Military Reservation, U. S. A.

(4) That plaintiff is informed, believes and alleges that the purchase of the liquor contained in said shipment was made in the State of Illinois and accomplished by a number of United States Army Officers, members of the Officers Club Mess, Fort Sill, by each of such Officers executing his own order for the purchase and shipment to and for him at the Officers Club Mess at Fort Sill of the liquor covered by his order; and that all of the liquor in said shipment was covered by such orders which were transmitted to the shipper, M. B. Gintz Company, of East St. Louis, Illinois, which it received, accepted and executed by delivering to your plaintiff the liquor covered by such orders, which plaintiff, as a common carrier for hire, accepted in accordance with its tariff published and on file with the Interstate Commerce Commission for transportation from East St. Louis, Illinois, through various States including the State of Oklahoma, destined to the

Officers Club Mess, Fort Sill, for the various Officers who purchased the same. That such order, purchase and shipment in no way violated any State or Federal law, nor any rule, order or regulation of the War Department of the United States or the Commanding Officer of the Fort Sill Military Reservation.

(5) That said shipment was routed to Fort Sill, via Oklahoma City, Oklahoma, and plaintiff, while transporting the same in one of its trailers, on October 26, 1942, momentarily stopped said trailer at its Oklahoma City terminal and dock to unload therefrom freight other than that destined for the Fort Sill Military Reservation and for points between Oklahoma City and Fort Sill Military Reservation; that it was the purpose of plaintiff, after unloading such freight, to load some 10,000 to 12,000 pounds of freight which it had accumulated at its Oklahoma City terminal from various directions and points, bound for Fort Sill and points intermediate between Oklahoma City and Fort Sill; that said freight would have made an entire truckload of 18,000 to 20,000 pounds; and it was the purpose of plaintiff to transport and deliver the aforesaid shipment to destination in said Reservation in the road truck and trailer in which it was transported from point of origin, and without said shipment ever having been removed therefrom during its entire movement.

(6) That on said October 26, 1942, shortly after the arrival of the truck and trailer containing the aforesaid shipment at the Oklahoma City terminal of plaintiff, and while the same was being loaded with the additional freight above mentioned, and while said shipment was still in transit in interstate commerce and before it had come to rest, the defendants, with the exception of George Goff, came upon the premises of plaintiff at 311 South Western Avenue in Oklahoma City, Oklahoma, and forcibly, wrongfully and unlawfully seized and took possession of said shipment and transported the same away from said premises; that defendants, and each of them, since said seizure, have wrongfully and unlawfully withheld and are continuing to so withhold possession of said shipment from plaintiff, and are unlawfully interfering with its transportation in interstate commerce to the consignee at the point of destination; that plaintiff is informed and believes that said shipment has

been stored in the basement of the Oklahoma County Court House in Oklahoma City, Oklahoma, and is now in the joint possession and custody of the defendants Walter B. Johnson and George Goff, their deputies, agents, servants and employees.

(7) That the Fort Sill Military Reservation site was acquired by the Federal Government from France long before Oklahoma became a State, and is now and has been, since prior to the admission of Oklahoma as a State to the Union, used exclusively for military purposes and for the performance of the functions of the War Department of the Federal Government; that the Officers Mess at Fort Sill is an instrumentality of the Federal Government, organized, created and operating in strict conformity to and in compliance with the Federal Laws and rules, regulations and orders of the War Department of the Federal Government and of the Commanding Officer of the Post; that such Officers Mess was created and is maintained for the necessary care, use and benefit of the Officers of the United States Army stationed at Fort Sill, and civilians are not entitled or permitted to use the facilities of such Officers Mess; that a large number of United States Army Officers live at said Officers Club and it is their only home and place of residence.

(8) That the laws of the State of Oklahoma do not govern and are not operative in and upon, and the State has no jurisdiction of, the Fort Sill Military Reservation, which is under the exclusive jurisdiction and control of the Federal Government, amenable only to the laws of said Government, the rules, regulations and orders of the War Department and of the Commanding Officer of said Fort; that the government upon said Reservation is and has at all times been entirely military, and is immediately administered and enforced by the Commanding Officer of said Fort; that the State of Oklahoma has no jurisdiction, power or authority over said Reservation or the military personnel stationed or located thereon, in connection with their activities within the confines of said Reservation, and has no right, power or authority to interfere with the rights and privileges of the military personnel stationed at or residing in and upon said Reservation, which is a separate governmental entity or sovereignty from the State of Oklahoma.

(9) That said shipment was not, at the time of said seizure or at any other time, moving into, through or
6 within the State of Oklahoma in violation of any of the constitutional or statutory provisions of said State with reference to the importation, transportation or sale of *spiritous* liquors or otherwise, and was not being imported or transported into the State of Oklahoma but was moving in interstate commerce, and particularly commerce to which authority to regulate is vested exclusively in Congress by Article 1, Section 8, and Article 4, Section 3, of the Federal Constitution, through the State, destined for and to within the *the* Fort Sill Military Reservation; and at the time of the unlawful interference with said shipment by the defendants, the same was in transit to its destination at and within the Fort Sill Military Reservation, and, but for said interference, said shipment would have continued its interstate movement to the destination within said Reservation without coming to rest within the State of Oklahoma.

(10) That the transportation of the aforesaid shipment was a legal and proper one, and violated no law of the State of Oklahoma, and plaintiff was bound as a common carrier for hire in interstate commerce to accept and transport said shipment under its tariffs on file with the Interstate Commerce Commission, by virtue of the provisions of the Interstate Commerce Act aforesaid, and is likewise bound thereby to complete said shipment and deliver the same to its destination in the Fort Sill Military Reservation; that said defendants, wholly without authority of law and beyond the scope of the powers and jurisdiction of the offices which they hold, wrongfully, unlawfully and forcibly seized and took possession of said shipment aforesaid, and continue to so wrongfully withhold possession of the same from this plaintiff and to unlawfully interfere with and obstruct the movement of said shipment in interstate commerce through the State of Oklahoma.

7 (11) That under Part II of the Interstate Commerce Act, as aforesaid, plaintiff has not only the right, but the duty and obligation, to transport said shipment through to the destination in the Fort Sill Military Reservation, and that its failure so to do is a breach of its duties as a carrier and bailee for hire and will subject it to claims for damages; that plaintiff is informed and believes

that the defendants, unless restrained from so doing, will destroy the aforesaid shipment under the pretense that it is contraband, which would likewise subject plaintiff to claims for damages; that plaintiff has no adequate remedy at law, and is being and will continue to be irreparably injured by the wrongful and unlawful acts of the defendants, as aforesaid.

(12) That under these circumstances, plaintiff is entitled to a mandatory injunction, restraining and enjoining the defendants, and each of them, their deputies, agents, servants and employees, from destroying the aforesaid shipment, from interfering with plaintiff's possession of the same or obstructing the movement of said shipment in interstate commerce to its destination, and requiring defendants to return said shipment to plaintiff at its dock at the Oklahoma City terminal from which it was wrongfully and unlawfully removed; that, pending a hearing upon the merits of this case, a preliminary injunction should issue, enjoining the defendants, and each of them, their deputies, agents, servants and employees, from destroying or damaging said shipment in any way, or removing the same from its present place of storage, requiring defendants to keep said shipment in status quo and protect the same from loss or damage; that, pending hearing upon the preliminary injunction and notice of the same as required by law, plaintiff is entitled to a temporary restraining order without notice, and will suffer immediate, irreparable injury unless the court

8 issues a temporary restraining order pending notice of and hearing upon the application for temporary injunction, restraining and enjoining the defendants, and each of them, their deputies, agents, servants and employees, from destroying or damaging said shipment in any way, or removing the same from its present place of storage, requiring defendants to keep said shipment in status quo and protect the same from loss or damage.

(13) That this action is one arising under the Commerce Clause of the Federal Constitution and Part II of the Interstate Commerce Act, and a determination of the controversy necessarily involves a construction, application and enforcement of said Federal Laws and other Federal Laws, and the court has jurisdiction over the subject matter herein under the provisions of 28 USCA, Section 41 (1) and (8); and in

this connection plaintiff states that the matter in controversy herein exceeds, exclusive of interest and costs, the sum or value of $3,000.00.

Wherefore, plaintiff prays for judgment as follows:

(1) That a mandatory injunction issue, restraining and enjoining the defendants, and each of them, their deputies, agents, servants and employees, from destroying the aforesaid shipment, from interfering with plaintiff's possession of the same or obstructing the movement of said shipment in interstate commerce to its destination, and requiring defendants to return said shipment to plaintiff at its dock at the Oklahoma City terminal from which it was wrongfully and unlawfully removed.

(2) That, pending a hearing upon the merits of this case, a preliminary injunction issue, enjoining the defendants, and each of them, their deputies, agents, servants and employees, from destroying or damaging said shipment
9 in any way, or removing the same from its present place of storage, requiring defendants to keep said shipment in status quo and protect the same from loss or damage.

(3) That, pending hearing upon the preliminary injunction and notice of the same as required by law, a temporary restraining order issue, without notice, restraining and enjoining the defendants, and each of them, their deputies, agents, servants and employees, from destroying or damaging said shipment in any way, or removing the same from its present place of storage, requiring defendants to keep said shipment in status quo and protect the same from loss or damage.

(4) For such other and further relief as plaintiff may be entitled, or the court may deem just and equitable.

J. B. DUDLEY, Ramsey Tower,
Oklahoma City, Oklahoma,
DUKE DUVALL, Ramsey Tower,
Oklahoma City, Oklahoma,
Attorneys for Plaintiff.

DUDLEY, DUVALL & DUDLEY, of Counsel.

[Verification omitted.]

Endorsed: Filed in District Court on October 30, 1942.

Answer.

11 Come now the defendants in the above cause and for answer to the complaint of plaintiff states:

(1) Defendants admit the allegations of paragraph one of said complaint.

(2) Defendants admit the allegations of paragraph two of said complaint.

(3) Defendants admit that 225 cases of wines and liquors were delivered to plaintiff, consigned to the F. A. S. Officers Club Mess at Fort Sill, Oklahoma, as alleged in the complaint.

(4) Defendants deny the allegations of paragraph four of plaintiff's complaint, except in so far as the same are covered in the supplemental stipulation herein filed.

(5) Defendants admit the allegations of paragraph five of the complaint, as set forth in paragraph four of the stipulation herein filed.

(6) Defendants deny that said liquors were transported by plaintiff in interstate commerce, but admit the allegations of paragraph 6 of the complaint, as set forth in paragraph 5 of the aforesaid stipulation.

12 (7) Defendants admit the allegations of paragraph seven of the complaint, except that defendants deny that the Officers Mess or Officers Club Mess at Fort Sill was created or is an instrumentality of the Federal Government, and set up as such as alleged in said paragraph of said complaint.

(8) The allegations of paragraph eight of the complaint are conclusions of law; defendants deny the same except as consistent with the statutes and decisions upon the matters therein set forth.

(9) Defendants deny the allegations and conclusions set forth in paragraphs nine, ten, eleven, twelve and thirteen of said complaint.

Defendants, therefore, pray that plaintiff be denied the relief prayed for and that said complaint be dismissed.

MAC Q. WILLIAMSON,
Attorney General;
SAM H. LATTIMORE,
Assistant Attorney General,
LEWIS R. MORRIS,
Attorneys for Defendants.

Dec. 7, 1942. Copy of foregoing answer received this date.

J. B. DUDLEY,
DUKE DUVALL,
Attorneys for Plaintiff.

Endorsed: Filed in District Court on December 11, 1942.

Stipulation.

13 The parties do hereby agree and stipulate, for the purposes of this law suit, as follows:

(1) That plaintiff is a corporation duly organized and existing under the laws of the State of Oklahoma, with its principal place of business at Oklahoma City therein; that the defendant Walter B. Johnson is the Commissioner of Public Safety of the State of Oklahoma; that the defendant T. R. Husted is the Superintendent of the Bureau of Identification and Investigation of the Department of Public Safety of the State of Oklahoma, and the defendants B. A. West and Charles Riggs are his Deputies; that the defendant George Goff is the Sheriff of Oklahoma County, Oklahoma, and the defendants Mike McGrew and Lewis Kolb are his Deputies.

(2) That plaintiff is now, and was at all times mentioned herein and for many years past, engaged in the business of the transportation of commodities generally by motor vehicle in interstate and foreign commerce as
14 a common carrier for hire, and operates in and through and serves the States of Kentucky, Indiana, Illinois,

Missouri, Kansas, Oklahoma, and Texas and the Fort Sill and other United States Military Reservations, under and by virtue of authority granted to it by the Interstate Commerce Commission pursuant to the provisions of the Federal Motor Carrier Act of 1935, as amended, being Part II of the Interstate Commerce Act, 49 USCA, Chapter 8; that plaintiff is so authorized to serve the public in interstate commerce between East St. Louis, Illinois, St. Louis, Missouri, and Lawton, Oklahoma, and Fort Sill Military Reservation, U. S. A., via Oklahoma City; that among other commodities, plaintiff was and is authorized to transport wines and *spiritous* liquors, and has and had duly published and filed with the Interstate Commerce Commission its lawful tariffs quoting rates and charges for the shipment of said commodities over its line to the points and places it is authorized to serve.

(3) That on or about the 24th day of October, 1942, there was tendered by M. B. Gintz Company, as consignor, at East St. Louis, Illinois, to plaintiff, and accepted by it in the regular course of its business as a common carrier, a shipment consisting of 225 cases of wines and *spiritous* liquors, under the standard, uniform, straight bill of lading, a copy of which is attached hereto as Exhibit "A", and upon which shipment the freight rate provided in said tariffs was prepaid, consigned to the F. A. S. Officers Club Mess at Fort Sill Military Reservation, U. S. A.

(4) That said shipment was routed to Fort Sill, via Oklahoma City, Oklahoma, and plaintiff, while transporting the same in one of its trailers, on October 26, 1942, momentarily stopped said trailer at its Oklahoma City
15 terminal and dock to unload therefrom freight other than that destined for the Fort Sill Military Reservation and for points between Oklahoma City and Fort Sill Military Reservation; that it was the purpose of plaintiff, after unloading such freight, to load some 10,000 to 12,000 pounds of freight which it had accumulated at its Oklahoma City terminal for various directions and points, bound for Fort Sill and points intermediate between Oklahoma City and Fort Sill; that said freight would have made a truckload of 18,000 to 20,000 pounds; that it was the purpose of plaintiff to transport and deliver the aforesaid shipment

to destination in said Reservation in the road truck and trailer in which it was transported from point of origin, and without said shipment ever having been removed therefrom during its entire movement.

(5) That on said October 26, 1942, shortly after the arrival of the truck and trailer containing the aforesaid shipment at the Oklahoma City terminal of plaintiff, and while the same was being loaded with the additional freight above mentioned, and while said shipment was still in transit from its origin at East St. Louis, Illinois, to its destination within Fort Sill Military Reservation, and before it had come to rest, the defendants personally, with the exception of George Goff, came upon the premises of plaintiff at 311 South Western Avenue in Oklahoma City, Oklahoma, and forcibly seized and took possession of said shipment and transported the same away from said premises; that defendants, and each of them, since said seizure, have withheld and are continuing to so withhold possession of said shipment from plaintiff, and are interfering with its transportation to the consignee at the point of destination; that said shipment is now in the joint possession and custody of the defendants Walter B. Johnson and George Goff, their deputies, agents, servants and employees.

16 (6) That the Fort Sill Military Reservation site was acquired by the Federal Government from France long before Oklahoma became a State, and is now and has been, since prior to the admission of Oklahoma as a State to the Union, used exclusively for military purposes and for the performance of the functions of the War Department of the Federal Government; that the Officers Mess at Fort Sill was created and is maintained for the care, use and benefit of the Officers of the United States Army stationed at Fort Sill, and civilians are not entitled or permitted to use the facilities of such Officers Mess; that a large number of United States Army Officers live at said Officers Club and it is their only home and place of residence.

(7) That on the matters stipulated upon herein, no proof shall be necessary, and this stipulation is made in lieu of evidence but shall be without prejudice to the introduc-

tion of any additional proof, not inconsistent with the matters of fact agreed upon herein.

Dated this 24th day of November, 1942.

J. B. DUDLEY,
DUKE DUVALL,
Attorneys for Plaintiff.
MAC Q. WILLIAMSON,
Attorney General;
SAM H. LATTIMORE,
Assistant Attorney General,
LEWIS R. MORRIS,
County Attorney, Okla. Co. Okla.,
Attorneys for Defendants.

Exhibit A.

(Uniform Domestic Straight Bill of Lading, adopted by Carriers in Official, Southern, Western and Illinois Classification territories, Mar. 15, 1922, as amended Aug. 1, 1930.)

This Shipping Order must be legibly filed in, in ink, in indelible pencil, or in carbon, and retained by the agent.

Shipper's No. 09028

_____Company Agent's No. _____

Receive, subject to the classifications and tariffs in effect on the date of the issue of this shipping order. At East St. Louis, Ill., Oct. 24, 1942. From M. B. Gintz, the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the condition on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee—For purpose of notification only)

Consigned to F. A. S. Officers Club Mess 225

Destination Fort Sill, State of Okla. County of _____ Dock

Route

Delivering Carrier Car Initial Car No.

Subject to Section 7 of conditions if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement.

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

M. B. GINTZ

Per _____

12543

No. Packages	Description of Articles Special Marks, and Exceptions	Weight (Sub. to (Cor.)	Class or Rate
225	Merchandise	9000	232

Herman Yellow Transit

Ck. If charges are to be prepaid, write Col. or stamp here

"To be Prepaid."

To be Prepaid

Received 20880

to apply in prepayment of the charges on the property described hereon.

_____

Agent or Cashier

(Mail or street address of consignee—For purpose of notification only)

Consigned to F. A. S. Officers Club Mess 225
Destination Fort Sill, State of Okla. County of _____ Dock
Route
Delivering Carrier Car Initial Car No.

Subject to Section 7 of conditions if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement.
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.
M. B. GINTZ
Per _____

12543

Ck. If charges are to be prepaid, write Col. or stamp here
"To be Prepaid."
To be Prepaid
Received 20880
to apply in prepayment of the charges on the property described hereon.

No. Packages	Description of Articles Special Marks, and Exceptions	Weight (Sub. to (Cor.)	Class or Rate
225	Merchandise	9000	232

_____
Agent or Cashier
Per _____
(The Signature here acknowledges only the amount prepaid.)

Herman Yellow Transit

All Breakage or Shortage Must Be Reported Within 24 Hours

(Shipper's imprint in lieu of stamp; not a part of bill of lading approved by the Inter State Commerce Commission.)

The fibre boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon, and all other requirements of Rule 41 of the Consolidated Freight Classification. Shipping Order

If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."
Note—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.
The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

Charges Advanced: $ _____

M. B. Gintz, Shipper, Per M. B. Gintz, L. T.
Permanent post-office address of shipper: 228 N. 7th St., East St. Louis, Ill.

**Agent Must Detach and Retain This Shipping Order and Must Sign the Original Bill of Lading.

Endorsed: Filed in District Court on November 25, 1942.

Supplemental Stipulation.

Come now the plaintiff and defendants herein, above named, and stipulate and agree, in addition to the facts heretofore stipulated in this cause, as follows:

(1) That the Fort Sill F. A. S. Officers Club is an organization composed of a membership consisting of several thousand Officers who are stationed and on duty at the United States Fort Sill Military Reservation, and such organization is managed by an Officers Club Secretary who is an Army Officer on active duty; that such club provides, among other things, an Officers Mess, living quarters for a number of Officers, lounges, reading rooms and other recreational facilities, and renders various club services for its membership.

(2) That prior to the ordering of the shipment in controversy, several hundred Officers, members of the Officers Club, gave to the Club Secretary their respective written orders for varying quantities of liquor, which orders named the brand and quantity desired and which were accompanied by check or money which was to be in payment for the respective orders; that these orders were assembled, tabulated and totaled by the Secretary, and who, acting for said Officers, telephoned the same to the shipper, M. B. Gintz Company at East St. Louis, Illinois, which accepted the same in said telephone conversation through its General Sales Manager; and, pursuant thereto, the shipper made up such orders and delivered them to the plaintiff as a common carrier for hire, for shipment under bill of lading referred to in the original stipulation and attached as an exhibit thereto, and prepaid the freight thereon, which shipment was consigned to the Officers Club in Fort Sill Military Reservation; that if the shipment had arrived, it would have been received at the Officers Club by

the Secretary of the Club for delivery to the aforesaid Officers, at the Club.

Dated this 1st day of December, 1942.

J. B. DUDLEY,
DUKE DUVALL,
Attorneys for Plaintiff.
MAC Q. WILLIAMSON, Atty. Gen.,
SAM H. LATTIMORE, Asst. Atty. Gen.,
LEWIS R. MORRIS, Co. Atty.,
Okla. Co., Okla.
Attorneys for Defendants.

Endorsed: Filed in District Court on December 1, 1942.

Opinion.

21 In this action the plaintiff seeks injunctive relief against the defendants for interfering with an interstate shipment of freight from East St. Louis, Illinois, to Fort Sill Military Reservation.

The facts disclosed are that the plaintiff is a corporation engaged in the business of transportation of commodities generally by motor vehicle in interstate commerce as a common carrier for hire, operating in and through and serving the states of Oklahoma, Kansas, Missouri, Illinois, and other states, and points within the geographical limits of said states under and by virtue of authority granted to it by the Interstate Commerce Commission pursuant to the provisions of the Federal Motor Carrier Act of 1935, as amended, being Part II of the Interstate Commerce Act, 49 U. S. C. A. chapter 8.

The defendant Walter B. Johnson is the Commissioner of Public Safety of the State of Oklahoma; the defendant T. R. Husted is the Superintendent of the Bureau of Identification and Investigation of the Department of Public Safety of the State of Oklahoma; the defendants B. A. West
22 and Charles Riggs are the deputies of the defendant Husted; the defendant George Goff is the Sheriff of Oklahoma County, Oklahoma; and, the defendants Mike McGrew and Lewis Kolb are the deputies of the defendant Goff.

The Fort Sill F. A. S. Officers Club is an organization composed of several thousand officers who are stationed and on duty at the United States Fort Sill Military Reservation, and such organization is managed by an Officers Club secretary who is an army officer on active duty. Such club provides, among other things, an officers mess, living quarters for a number of officers, lounges, reading rooms and other recreational facilities, and renders various club services for its membership.

On or about October 24, 1942, there was tendered by M. G. Gintz Company, as consignor, at East St. Louis, Illinois, to plaintiff, and accepted by it in the regular course of its business as a common carrier, a shipment consisting of 225 cases of wines and *spiritous* liquors, under the standard, uniform, straight bill of lading, and upon which shipment the freight rate provided in said tariffs was prepaid, consigned to the F. A. S. Officers Club Mess at Fort Sill Military Reservation, U. S. A.

The shipment was routed to Fort Sill via Oklahoma City, Oklahoma, and the plaintiff, while transporting the same in one of its trailers, on October 26, 1942, momentarily stopped said trailer at its Oklahoma City terminal and dock to unload therefrom freight other than that destined for the Fort Sill Military Reservation and for points between Oklahoma City and Fort Sill Military Reservation. It was the purpose of the plaintiff, after unloading such freight, to load some 10,000 or 12,000 pounds of freight which it had accumulated at its Oklahoma City terminal for various directions and points, bound for Fort Sill and points intermediate between Oklahoma City and Fort Sill, which freight would have made a truckload of 18,000 to 20,000 pounds; and it was the purpose of the plaintiff to transport and deliver the aforesaid shipment to destination in said reservation in the truck and trailer in which it was transported
23 from point of origin, and without said shipment ever having been removed from said truck and trailer during its entire movement.

On said date of October 26, 1942, shortly after the arrival of the truck and trailer containing the aforesaid shipment at the Oklahoma City terminal of plaintiff, while the same was being loaded with the additional freight above mentioned, while said shipment was still in transit from its origin at

East St. Louis, Illinois, to its destination within Fort Sill Military Reservation, and before it had come to rest, the defendants personally, with the exception of George Goff, came upon the premises of the plaintiff at 311 South Western Avenue in Oklahoma City, Oklahoma, and forcibly seized and took possession of said shipment and transported the same away from said premises. The defendants, and each of them, since said seizure, have withheld and are continuing to withhold possession of said shipment from plaintiff, and are interfering with its transportation to the consignee at the point of destination; and said shipment is now in the joint possession and custody of the defendants Walter B. Johnson and George Goff, their deputies, agents, servants and employees.

The Fort Sill Military Reservation site was acquired by the Federal Government from France long before Oklahoma became a state, and is now and has been, since prior to the admission of Oklahoma as a state into the Union, used exclusively for military purposes and for the performance of the functions of the War Department of the Federal Government. The Officers Mess at Fort Sill was created and is maintained for the care, use and benefit of the officers stationed at Fort Sill, and civilians are not entitled or permitted to use the facilities of such Officers Mess. A large number of United States army officers live at said Officers Club and it is their only home and place of residence.

Prior to the ordering of the shipment in controversy, several hundred officers, members of the Officers Club, gave to the club secretary their respective written orders for varying quantities of liquor, which orders named the
24 brand and quantity desired and were accompanied by check or money to be used in payment of the respective orders. The orders were assembled, tabulated and totaled by the secretary, who, acting for said officers, telephoned the same to the shipper, M. B. Gintz Company, at East St. Louis, Illinois, which accepted the same in said telephone conversation through its general sales manager and pursuant thereto, the shipper made up such orders and delivered them to the plaintiff as a common carrier for hire, for shipment under bill of lading referred to above, and prepaid the freight thereon, which shipment was consigned to the Officers Club in the Fort Sill Military Reser-

vation, and had the shipment arrived, it would have been received at the Officers Club by the secretary of the club for delivery to the aforesaid officers at the club.

The Twenty-First Amendment to the Constitution of the United States provides in part:

"Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

"Section 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

This amendment became effective on December 5, 1933, having been duly ratified by the several States as provided in the Constitution.

On August 27, 1935, Congress enacted a law governing shipments into states having dry laws, 49 Stat. 877, sec. 202(b), 27 U. S. C. A. sec 122, which provides:

"The shipment or transportation, in any manner or by any means whatsoever, of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended, by any person interested therein, to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, is hereby prohibited."

On March 2, 1939 the Legislature of Oklahoma passed an act, S. L. 1939, c. 16, 37 Okla. St. Ann. sec. 1, the enacting clause of which provides:

"An Act creating and providing for a permit system for the importation and transportation of intoxicating liquor, containing more than four per cent alcohol by volume,

into the State of Oklahoma for scientific, sacramental, medicinal, or mechanical purposes; forbidding importation of such liquor without permit; fixing fees; providing penalties; repealing Sections 2597 and 2598, Oklahoma Statutes, 1931; and declaring an emergency."

Section 1 (37 Okl. St. Ann. sec. 41) of this act provides:

"It shall be unlawful for any person, individual or corporate, to import, bring, transport, or cause to be brought or transported into the State of Oklahoma, any intoxicating liquor, as defined by the laws of this State, containing more than four (4%) per cent of alcohol by volume, without a permit first secured therefor as hereinafter provided."

The question to be determined is whether or not the Fort Sill Military Reservation, the destination of the shipment of liquor designated in the shipping order attached to the stipulation of the parties, is a point "into the State of Oklahoma" within the decisions of our courts. This raises a number of questions.

First. Was the shipment one in interstate commerce?

In the case of Louisville & Nashville R. R. Co. v. Cook Brewing Co., 223 U. S. 70, 56 L. Ed. 355, where it was sought to obtain an injunction against the railroad company from refusing interstate shipment of liquor into what was known to be dry territory in the State of Kentucky, it was said:

"Beer and other intoxicating liquors are a recognized and legitimate subject of interstate commerce."

"A state cannot forbid a common carrier to transport intoxicating liquors from a consignor in one State to a consignee in another State."

26 "Until transportation of intoxicating liquor from one State to another is concluded by delivery to the consignee, the article transported does not become subject to state regulation."

"A state statute regulating shipments of common carriers, although legal as to intrastate shipments, if illegal as to interstate shipments imposes no obligation upon the carrier in regard thereto, nor affords any excuse for refusal to perform its duties as a carrier."

Applying this rule, the shipment originating in East St. Louis, Illinois, and destined for Fort Sill Military Reservation, was in interstate commerce and would not become subject to state regulation until delivery at its destination, unless the shipment is in some manner regulated by the Twenty-First Amendment and the laws enacted in support thereof.

Second. Was the Fort Sill Military Reservation a place within the State of Oklahoma over which the State had jurisdiction?

In the case of Fort Leavenworth R. R. Co. v. Lowe, 114 U. S. 525, 29 L. Ed. 264, the railroad company sought to recover taxes imposed and paid on its property within the Fort Leavenworth Military Reservation, and the court held:

"When the United States acquire lands within the limits of a State by purchase, with the consent of the Legislature of the State, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, the Constitution confers upon them exclusive jurisdiction of the tract so acquired; but when they acquire such lands in any other way than by purchase with the consent of the Legislature, their exclusive jurisdiction is confined to the erections, buildings and land used for the public purposes of the Federal Government."

"In the act admitting Kansas as a State, there was no reservation of Federal jurisdiction over the Fort Leavenworth Military Reservation. The State of Kansas subsequently ceded to the United States exclusive jurisdiction over the same, 'saving further to said State the right to tax railroad, bridge, or other corporations, their franchises and property on said reservation.' Held, that the property and franchises of a railroad company within the reservation was liable to pay taxes in the State of Kansas, imposed according to its laws."

Justice Field, in writing the opinion in this case, cited and quoted from the case of Commonwealth v. Clary, 8 Mass. 72, as follows:

27 "The case referred to in which the subject was considered by a learned State court is that of Commonwealth v. Clary, 8 Mass. 72. There the Supreme Court of

Massachusetts held that the courts of the Commonwealth could not take cognizance of offences, committed upon lands in the town of Springfield purchased with the consent of the Commonwealth by the United States for the purpose of erecting arsenals upon them. That was the case of a prosecution against the defendants for selling spirituous liquors on the land without a license, contrary to a statute of the State. But the court held that the law had no operation within the lands mentioned. 'The territory,' it said, 'on which the offence is charged is agreed to have been committed is the territory of the United States, over which the Congress have exclusive power of legislation.' It added, 'that the assent of the Commonwealth to the purchase of this territory by the United States had this condition annexed to it, that civil and criminal process might be served therein by the officers of the Commonwealth. This condition was made with a view to prevent the territory from becoming a sanctuary for debtors and criminals; and from the subsequent assent of the United States to the said condition, evidenced by their making the purchase, it results that the officers of the Commonwealth, in executing such process, act under the authority of the United States. No offences committed within that territory are committed against the laws of this Commonwealth, nor can such offences be punishable by the courts of the Commonwealth unless the Congress of the United States should give to the said courts jurisdiction thereof'."

Thus, when the State recognizes the existing Federal jurisdiction or cedes, by legislative act, exclusive jurisdiction to the Federal Government over such lands, except such as it specifically reserves to itself, such act of cession establishes and limits that jurisdiction. Such was the holding in Standard Oil Company of California v. California, 291 U. S. 242, 78 L. Ed. 775, where the State of California undertook to lay and collect an excise tax upon every distributor for each gallon of motor vehicle fuel "sold and delivered by him in the state."

The Standard Oil Company of California, a Delaware Corporation, sold and delivered to the Post Exchange, within the *Presidio* of San Francisco, 420 gallons of gasoline. It carried this to the Exchange's place of business in barrels or tanks by trucks. Both sale and delivery were

within the area long held and occupied by the United States for military purposes. Upon appeal to the Supreme Court of the United States, from a decision in favor of the
28 state, the case was reversed, the court holding as follows:

"A State is without power to levy a license tax in respect of the selling and delivery of goods on a military reservation included within the exterior limits of the State but over which the full legislative authority has been ceded to the United States by an Act of the State Legislature."

The court, after quoting the language used by the act of cession of jurisdiction by the state legislature, which act of cession is very similar to the act of the State of Oklahoma ceding jurisdiction over the Fort Sill Military Reservation used the following language:

"Appellant challenges the validity of the taxing act as construed by the Supreme Court. The argument is that since the State granted to the United States exclusive legislative jurisdiction over the *Presidio*, she is now without power to impose taxes in respect of sales and deliveries made therein. This claim, we think, is well-founded; and the judgment below must be reversed.

"In three recent cases—Arlington Hotel Co. v. Fant, 278 U. S. 439, United States v. Unzeuta, 281 U. S. 138, and Surplus Trading Co. v. Cook, 281 U. S. 647—we have pointed out the consequences of cession by a State to the United States of jurisdiction over lands held by the latter for military purposes. Considering these opinions, it seems plain that by the Act of 1897 California surrendered every possible claim of right to exercise legislative authority within the *Presidio*—put that area beyond the field of operation of her laws."

The question has been raised over the manner in which the Fort Sill Military Reservation was acquired by the United States. It has been stipulated that the territory comprising it was acquired by the United States. It has been stipulated that the territory comprising it was acquired from France long before there was a Territory or State of Oklahoma. The Act of Congress of May 2, 1890, 26 Stat. at Large 81, known as the Organic Act designated the boundaries of the Territory of Oklahoma. The lands com-

prising the original Fort Sill Military Reservation are not embraced within those boundaries.

The Act of Congress of March 3, 1901, 31 Stat. 1093, provided for the opening for settlement of the Kiowa-Comanche County including the territory around the Fort Sill
29 Military Reservation. The Fort Sill and El Reno Military Reservations were not opened for settlement under that act, but were referred to in locating the land offices in that enactment, as follows:

"Section 3. The President is hereby authorized to establish two additional United States land districts and land offices in the Territory of Oklahoma, * * * one of the land offices shall be located at El Reno, in the County of Canadian; and the other shall be located at the county seat nearest Fort Sill. * * *"

It will be observed that one of the land offices was to be established at El Reno, which was an established town within the Territory of Oklahoma, and the other to be in a county seat town "nearest Fort Sill."

The Act of Congress of June 16, 1906, 34 Stat. 267, known as the Enabling Act, which provided for the creation of the State of Oklahoma, provided or designated no different boundaries, but began as follows:

"Be it enacted * * * That the inhabitants of all that part of the area of the United States now constituting the Territory of Oklahoma and the Indian Territory, as at present described, may adopt a constitution and become the State of *Oklahoma*, * * *."

In the Constitution of the State of Oklahoma, adopted in convention June 16, 1907, ratified by the people September 17, 1907, and approved by Presidential Proclamation November 16, 1907, in *Sections* 3, Article I, we find the following language:

"The people inhabiting the State do agree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying within the boundaries thereof, * * *."

It is therefore apparent that the original Fort Sill Military Reservation was never a part of, or under the juris-

diction of, the Territory or State of Oklahoma, except as such jurisdiction has been specifically ceded to the State by Congress.

In view of this situation, it is both interesting and enlightening to view some of the decisions of the Oklahoma Supreme Court in its interpretation of the law governing the situation, as litigation involving the question arose from time. It is quite clear that it very definitely has determined its attitude toward it and has never intimated that the Fort Sill Military Reservation was a part of the State of Oklahoma although being *situated* within its boundaries.

In the case of Utley et al. v. State Industrial Commission et al., 176 Okla. 255, 55 P. 2d 762, Utley was given an award by the Industrial Commission for injuries received during his employment at the Fort Sill Military Reservation. The employer and insurance carrier instituted an action to review the award, contending that the Workmen's Compensation Act of Oklahoma was not applicable and that the Industrial Commission was without jurisdiction over the injuries received by Utley in the course of his labor performed on the United States Military Reservation at Fort Sill. The court held:

"The Oklahoma Workmen's Compensation Act does not apply to injuries occurring within the Fort Sill Military Reservation, although such place is within the exterior boundaries of the state, since exclusive jurisdiction of such place was ceded to the United States."

In the body of the opinion the court said:

"The Fort Sill Military Reservation was set aside and designated as such before the state of Oklahoma was created, and the land constituting that reservation was not purchased by the federal government from the state of Oklahoma within the meaning and for the purposes included within article 1, sec. 8, cl. 17, of the Constitution of the United States, but was owned by the United States by cession from France many years before Oklahoma became a state.

"In 1913 our state Legislature by enactment (Laws 1913, c. 52) ceded exclusive jurisdiction to the United States of

all territory 'now owned by the United States and comprised within the limits of the Military Reservations of Fort Sill,' reserving the right, however, to serve civil or criminal process within the reservation in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed outside of the reservation."

And again in the case of In re Annexation of Reno Quartermaster Depot, etc., 180 Okla. 274, 69 P. 2d 659, it was held:

"Article 1, sec. 8, U. S. Constitution confers exclusive jurisdiction upon Congress to legislate in respect to
31 military reservations and similar instrumentalities of the federal government, and the general school laws of this state can have no application to the military reservations located within the state."

In the body of the opinion, the court commented upon and set out in detail the Cession Act of 1913 of the State of Oklahoma as follows:

"The lands comprising the Fort Reno Military Reservation belonged to the United States and were used as a military reservation long before the territory or the state of Oklahoma came into existence, and when the state was organized, these lands were reserved by the federal government, and Congress has passed no act specifically yielding jurisdiction over the Reservation to the state. Nevertheless, the Fourth Legislature of the state of Oklahoma, assuming that statehood conferred upon the state the right of sovereignty over all the territory within its boundaries, and desiring to take cognizance of the jurisdiction essentially belonging to the federal government over the Reservation, and reserving to the state only such jurisdiction and powers generally recognized by the federal government in such cases as not inconsistent with the free and effective use of the lands for the purposes intended, passed the Act of March 17, 1913, ceding to the federal government exclusive jurisdiction, with certain reservations, said act being chapter 52, section 1, Sess. Laws 1913, and brought forward as section 12253, O. S. 1931 (80 Okla. St. Ann. sec. 4), being as follows: 'That exclusive jurisdiction be, and the same is hereby ceded to the United States over all the territory

now owned by the United States and comprised within the limits of the Military Reservations of Fort Sill, in Comanche County, and Fort Reno, in Canadian County, as declared from time to time by the President of the United States, and over such lands as may hereafter be acquired for the enlargement of said reservations; provided, however, that the State of Oklahoma reserves the right to serve civil or criminal process within said reservations in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said state but outside of such cessions and reservations; provided, further, that the State of Oklahoma reserves the right to tax railroad companies and other corporations and their franchises and property on said reservations; and provided, further, that the jurisdiction herein ceded shall continue no longer than the United States shall own and hold said reservation for military purposes.' " (Emphasis supplied.)

In the reply brief, counsel for defendants cite the most recent expression of the Supreme Court of Oklahoma in the case of Ottinger Brothers et al. v. Clark et al., decided November 17, 1942, and reported in the Law Journal of the Oklahoma Bar Association of November 21, 1942, at
32 page 1460. In this case the Oklahoma Workmen's Compensation Law again was before the court with reference to injuries received at the Fort Sill Military Reservation and the court held:

"Where an express cession of jurisdiction, with reservations, is made by the State Legislature in favor of the United States, Congress has power to relinquish or recede to the state the jurisdiction thus acquired, without abandoning the property or its legitimate use.

"Jurisdiction, with reservations, acquired from a state, although exclusive while it subsists, is to be regarded as a mere suspension of the state jurisdiction and, therefore, an act of Congress relinquishing such jurisdiction, or any part thereof, and receding it to the state, is effective for that purpose, without any acceptance or assent by the state."

In the body of the opinion the court said:

"In 1936 Congress conferred upon or receded to the state the jurisdiction to extend the Compensation Law to the

reservation. See Act of June 25, 1936, 49 Stat. at L. 1938, 40 USCA sec. 290."

* * * * * *

"In the present case the state had full political jurisdiction over the military reservation until the statute of cession was enacted in 1913. The effect of that statute was to place in abeyance the powers of the Legislature to extend the laws of the state to the reservation. When the Workmen's Compensation Law was enacted in 1915 it did not extend to the reservation by reason of the prior cession of jurisdiction. Utley v. State Industrial Commission, supra. But that law was merely in suspension or abeyance so far as the reservation was concerned. As long as the United States retained the exclusive right to legislate concerning that area as ceded by the state, the state could not apply the statute. However, when Congress receded the jurisdiction to the state by the 1936 Act, supra, the law was no longer in abeyance and applied, ipso facto, to the reservation. We have no fault to find with the opinion in the Utley case, supra, and the opinion under the then existing law was undoubtedly correct. The Utley case is readily distinguishable from the case at bar. From statehood until the Act of 1913, supra, was enacted, the state, not the United States, had political control of the reservation. The United States then, after 1913, had jurisdiction over the reservation until the Act of Congress of 1936, supra. The Utley case was decided before the enactment of the last above-mentioned act.

"* * * The question herein is not one of the adoption of state laws, nor an attempted delegation of jurisdiction by Congress, but a question of relinquishing and revesting in the state a portion of the jurisdiction that the state had temporarily suspended in itself and vested in the
33 Federal Government by its act of cession of 1913."

* * * * * *

"Petitioners also contend that the Act of Congress of 1936, supra, was not accepted by the State Legislature until June, 1941, which acceptance was not in effect at the time the accident herein occurred, and for that further reason the Industrial Commission was without jurisdiction to make the award. We think this contention is without merit. The case of Renner v. Bennett, supra, is authority for the rule

that acceptance of the act of recession is unnecessary. If an acceptance was necessary, then it would have been equally necessary that the Congress of the United States accept the Act of the Legislature of 1913 ceding jurisdiction to the United States. That was never done. But as shown in Fort Leavenworth Railroad Co. v. Lowe, supra, and St. Louis-San Francisco R. Co. v. Satterfield, supra, said act was effective without any acceptance by Congress. The Act of Congress of 1936, supra, therefore, became effective immediately after its final passage."

This court cannot agree to the above conclusion, "from statehood until the Act of 1913, supra, was enacted, the state, not the United States, had political control of the reservation." The state never has had, does not now have, and cannot have, jurisdiction over the reservation except as it has been, or might be, ceded by the United States from time to time. This it seems was in the mind of the writer of the opinion in the case of In re Annexation of Reno Quartermaster Depot, supra, wherein the following language was used:

"Nevertheless, the Fourth legislature of the State of Oklahoma, assuming that statehood conferred upon the state the right of sovereignty over all the territory within the boundaries * * * passed the Act of March 17, 1913 * * *."

But regardless of how the question may be viewed by that court, the determination of the extent of the jurisdiction of the United States over the Fort Sill Military Reservation is a question for adjudication by the federal courts since it is construing a cession made by Congress and not a cession from the State of Oklahoma, except as it may apply to such additions as have been made to the original Fort Sill Military Reservation from lands over which the State of Oklahoma at one time had exclusive jurisdiction. And the decisions all seem to be in harmony with the view that
34 when the Act of March 17, 1913, was enacted the United States had exclusive jurisdiction over the reservation except for the purposes reserved to the state by Congress.

From these decisions and the language used therein, and the interpretation given by the Supreme Court of the United

States of such enactments, it is plain that exclusive jurisdiction over the Fort Sill Military Reservation is in the United States, except for purposes specifically reserved by the State of Oklahoma in its legislative enactment of March 17, 1913. Those reservations were to serve civil and criminal process, to tax railroad companies and other corporations and their franchises and property on said reservations, and as was stated in Standard Oil Co. v. California, supra, by that act it "put that area beyond the field of operation of its laws," unless the jurisdiction was widened or extended over the reservation by the Twenty-First Amendment to the Constitution of the United States and the laws enacted by virtue thereof.

That brings us to the third and main question involved in the light of the decisions. Was the destination of the shipment "into the State of Oklahoma?"

In the case of Collins v. Yosemite Park & Curry Co., 304 U. S. 518, 82 L. Ed. 1502, many of the points involved in the case at bar were discussed, and the decisions of the courts relating thereto applied. This case appears to be the latest expression of the Supreme Court of the United States on the subject and is binding upon this court. The Yosemite Park & Curry Company brought suit seeking to enjoin the State Board of Equalization and the Attorney General from enforcing the "Alcoholic Beverage Control Act" of the State of California within the limits of *Yosemmite* National Park. Among other allegations of the complaint one was made that the appellants threatened to seize beverages on, or being transported to, appellee's premises, demand rendition of reports and keeping of accounts, and threatened to institute civil and criminal proceedings against appellee for violation of the act. A permanent injunction was granted on several grounds. The Supreme Court on appeal reversed the lower court with instructions as to certain phases of the case. In the opinion, however, it declared the law very clearly on other phases of the case as it pertains to the case at bar, the court holding as follows:

"The United States, owning land set aside as a national park within the boundaries of a State, may constitutionally accept from the State a cession of jurisdiction over it. The

jurisdiction ceded need not be exclusive but may be limited by reservations of powers in the State, such as the power to tax persons and their property on the land included."

"It is not essential to valid acquisition of jurisdiction by cession from a State that the land involved shall be acquired by the United States for one of the purposes specified in Clause 17, sec. 8, Art. I, of the Constitution."

* * * * *

"* * * The other lands composing the Park have remained in the proprietorship of the United States since the time of the Treaty. By Act of April 15, 1919, California granted exclusive jurisdiction over the Park as a whole, saving certain rights, including the right 'to tax persons and corporations, their franchises and property' on the lands included; and this was accepted by the Act of Congress of June 2, 1920."

This is substantially what occurred in the case at bar, by the Act of the Oklahoma Legislature on March 17, 1913. Continuing from the Collins Case, supra, the court further held:

"2. (1) That whatever the status of jurisdiction existing at the time of their enactment, these Acts of cession and acceptance, of 1919 and 1920, are to be taken as declarations of the agreements, reached by the respective sovereignties, State and Nation, as to the future jurisdiction and rights of each in the entire area of Yosemite National Park.

"(2) Distinguished from the right to tax, the power to regulate the sale and use of alcoholic beverages was not reserved by the State, and such regulations are not enforceable in the Park."

* * * * *

"(4) This reservation does not authorize the State to exact, for the sale or importation of alcoholic beverages in the Park, the fees for licenses which are provided by sec. 5 of the California Alcoholic Beverage Control Act, those provisions being regulatory in character."

* * * * *

36 "4. The Twenty-First Amendment did not confer upon a state the power to regulate the importation of intoxicating liquors into territory over which it has ceded to the United States exclusive jurisdiction."

In the body of the opinion, the court used this language:

"The State makes the point that sec. 2 of the XXI Amendment gives it the right to regulate the importation of intoxicating liquors. Reliance for enforcement is placed upon secs. 49 and 49.2 of the Alcoholic Beverage Control Act. The argument for this claim is bottomed upon our decision in State Board of Equalization v. Young's Market Co., 229 U. S. 59, where we held that a statute imposing a $500 license fee for importing and a $750 license fee for brewing beer did not violate the commerce clause or the equal protection clause, because the words of the XXI Amendment 'are apt to confer upon the State the power to forbid all importations' and 'the State may adopt a lesser degree of regulation than total prohibition.' The lower court was of the opinion that though the Amendment may have increased 'the state's power to deal with the problem * * *, it did not increase its jurisdiction.' With this conclusion, we agree. As territorial jurisdiction over the Park was in the United States, the State could not legislate for the area merely on account of the XXI Amendment. There was no transportation into California 'for delivery or use therein.' The delivery and use is in the Park, and under a distinct sovereignty. Where exclusive *jurisdiction* is in the United States, without power in the State to regulate alcoholic beverages, the XXI Amendment is not applicable." (Emphasis supplied.)

The writer of this opinion may have his personal views with reference to the general policy of permitting the use of intoxicants within military reservations within so-called "dry states", however, in this case the facts are stipulated by the parties and the law has been declared by the Supreme Court of the United States, and, therefore, no alternative is left this court but to apply the declared law to the admitted facts.

The issues must be determined in favor of the plaintiff. A mandatory injunction will issue directing the defendants to return the shipment in question to the plaintiff for delivery to its original destination. An exception is allowed defendants.

A form of judgment consistent with this opinion may be submitted within ten days from this date.

EDGAR S. VAUGHT,
United States District Judge.

Dated this 24th day of December, 1942.

Endorsed: Filed in District Court on Dec. 24, 1942.

Findings of Fact, Conclusions of Law, and Decree.

37 Now on this 11th day of December, 1942, the above entitled cause comes regularly on for trial pursuant to assignment, plaintiff appearing by its representatives and its attorneys of record, and defendants appearing in person and by their attorneys of record. The parties announce ready for trial, and all of the facts are agreed upon by admissions in the pleadings and written stipulations of fact. After argument by counsel, the case is submitted upon said agreed facts and upon written briefs, and the court takes the matter under advisement.

Now on this 24th day of December, 1942, the matter comes on for decision, and the court makes the following findings of fact, conclusions of law and decree:

Findings of Fact.

38 The court finds the facts are as agreed upon by the parties in the admissions contained in the pleadings and in the written stipulations of the parties on file herein, and the court adopts such agreed facts as its findings of fact.

Conclusions of Law.

The court concludes as a matter of law, as follows:

(1) That the court has jurisdiction of the parties and of the subject matter.

(2) That the shipment of liquor in controversy and described in the complaint was moving in interstate commerce at the time of its seizure by the defendants.

(3) That Fort Sill Military Reservation is under the exclusive jurisdiction and dominion of the Federal Government, and the State of Oklahoma has no jurisdiction over it,

except in very limited respects where Congress has ceded jurisdiction to the State and which are of no effect upon or pertinent to the issues in this case.

(4) That said shipment, being destined for delivery in Fort Sill Military Reservation, was a shipment through the State of Oklahoma, and was not transported into the State for delivery or use therein.

(5) That said shipment was lawfully moving in interstate commerce at the time of its seizure, and not in violation of the laws of the State of Oklahoma or of the United States, and the defendants unlawfully seized the same and are unlawfully retaining possession thereof.

39 (6) That defendants should be required to return the shipment to the plaintiff, and enjoined from interfering with its delivery to its destination; that the complaint is well taken and plaintiff is entitled to the relief sought, and the mandatory injunction should issue as prayed for therein.

Decree.

It Is Therefore Considered, Ordered, Adjudged and Decreed by the court that the defendants, Walter B. Johnson, T. R. Husted, B. A. West, Charles Riggs, George Goff, Mike McGrew and Lewis Kolb, their agents, servants, employees and successors, be, and they are hereby ordered, directed and mandatorily enjoined to forthwith return to the plaintiff, Yellow Cab Transit Company, at its terminal at 311 South Western Avenue, Oklahoma City, Oklahoma, the shipment of liquor seized by them from the plaintiff at said terminal on or about October 26, 1942, and that said defendants, their agents, servants, employees and successors, be and hereby are permanently restrained and enjoined from further intertering with the interstate movement and delivery of said shipment to its *desitnation* by plaintiff.

Dated at Oklahoma City, Oklahoma, this 2nd day of January, 1943.

EDGAR S. VAUGHT,
United States District Judge.

Endorsed: Filed in District Court on Jan. 2, 1943.

Notice of Appeal to the Circuit Court of Appeals.

40 Notice is hereby given that Walter B. Johnson, T. R. Husted, B. A. West, Charles Riggs, George Goff, Mike McGrew and Lewis Kolb, defendants, above named, hereby appeal to the Circuit Court of Appeals for the Tenth Circuit, from the final judgment and decree entered in this action on January 2, 1943.

MAC Q. WILLIAMSON,
Attorney General;
SAM H. LATTIMORE,
Assistant Attorney General,
Attorneys for Appellants.

Endorsed: Filed in District Court on Jan. 9, 1943.

(Clerk's Certificate to Transcript.)

United States of America, Western District of Oklahoma, ss.

44 I, Theodore M. Filson, Clerk of the District Court of the United States for the Western District of Oklahoma, do hereby certify the above and foregoing to be a full, true and complete transcript of the pleadings, record and proceedings in said court in case No. 1145 Civil, Yellow Cab Transit Company, a corporation, Plaintiff, vs. Walter B. Johnson, et al., Defendants, as full, true and complete as the said transcript purports to contain and as called for by the Designation of record above set forth.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court, at Oklahoma City, in said District, this 21st day of January, A. D. 1943.

THEODORE M. FILSON, Clerk,
(Seal) By GRACE B. DAVIS, Deputy.

Filed February 13, 1943. Robert B. Cartwright, Clerk.

Order.

On this 2nd day of February, 1943, coming on to be heard, the motion of defendants, Walter B. Johnson and T. R. Husted, for an order joining as defendants, J. M. Gentry

and Ivan Kennedy, and it appearing that since the judgment of the court herein and since the filing and service of the notice of appeal, the said Walter B. Johnson has been succeeded in office as Commissioner of Public Safety of the State of Oklahoma by said J. M. Gentry, and the said T. R. Husted has been succeeded in office as Superintendent of the Bureau of Identification and Investigation of the Department of Public Safety of the State of Oklahoma by Ivan Kennedy, and that said successors in office should be properly joined as parties defendant herein, and it further appearing that said J. M. Gentry and said Ivan Kennedy have given their assent to the making of an order joining them as said parties.

It is therefore ordered that the said J. M. Gentry and said Ivan Kennedy, as such successors in office of said Walter B. Johnson and T. R. Husted, be and they are hereby joined as parties defendant and as parties appellant in this action.

It is further ordered that the Clerk transmit a certified copy hereof to the Clerk of the Circuit Court of Appeals to be incorporated and become a part of the transcript of record on appeal.

EDGAR S. VAUGHT, District Judge.

Endorsed: Filed Feb. 2, 1943. Theodore M. Filson, Clerk, By Grace B. Davis, Deputy.

Certified Copy.

I, Theodore M. Filson, Clerk of the United States District Court in and for the Western District of Oklahoma, do hereby certify that the annexed and foregoing is a true and full copy of the original Order Joining Parties Defendant, filed February 2, 1943, in case No. 1145, Civil, Yellow Cab Transit Company, a corporation, Plaintiff, vs. Walter B. Johnson, et al., Defendants, as the same appears on file in my office. • • •

In Testimony Whereof, I have hereunto subscribed my

name and affixed the seal of the aforesaid court at Oklahoma City, this 3rd day of February, A. D. 1943.

THEODORE M. FILSON, Clerk,
By GRACE B. DAVIS, Deputy Clerk.

(Seal)

Filed February 15, 1943. Robert B. Cartwright, Clerk.

And thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Tenth Circuit:

Order of Submission.

Thirtieth Day, March Term, Friday, May 21st, A. D. 1943. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Alfred P. Murrah, Circuit Judges.

This cause came on to be heard, Sam H. Lattimore, Esquire, appearing for appellants, J. B. Dudley, Esquire, and Duke Duvall, Esquire, appearing for appellee.

On motion, appellants were granted leave to file twenty printed copies of their brief herein out of time, which was accordingly done.

Thereupon this cause was argued by counsel and was submitted to the Court.

Opinion.

[July 26, 1943.]

Sam H. Lattimore, Asst. Atty. Gen., State of Oklahoma (Mac Q. Williamson, Atty Gen., State of Oklahoma and George Miskovsky, Co. Atty., Oklahoma County, Oklahoma) were with him on the brief for appellants.

J. B. Dudley and Duke Duvall (Dudley, Duvall & Dudley were with them on the brief) for appellee.

Before Phillips, Bratton, and Murrah, Circuit Judges.

Phillips, Circuit Judge, delivered the opinion of the court.

The F. A. S. Officers Club is an organization composed of several thousand army officers who are on duty at the United States Fort Sill Military Reservation.[1] The Club is managed by a secretary who is an army officer in active service. It provides, among other things, an officers' mess, living quarters for a number of officers, lounges, reading rooms, and other recreational facilities, and renders various club services to its members.

[1]Hereinafter called the Reservation.

Prior to October 24, 1942, several hundred members of the Club gave to the Club secretary their individual written orders for varying quantities of intoxicating liquor. These orders designated the brand and quantity desired and were accompanied by checks or money to pay for such intoxicating liquor. The Club secretary, acting for such officers, assembled, tabulated, totaled, and forwarded these orders to M. B. Gintz Company, at East St. Louis, Illinois. The Gintz Company accepted the orders and in fulfillment thereof, on October 24, 1942, delivered to Yellow Cab Transit Company[2] at East St. Louis, on a uniform bill of lading, 225 cases of wine and spirituous liquors, consigned to F.A.S. Officers Club Mess, at the Reservation.

While such shipment was in the possession of the Transit Company as a common carrier and in the course of transit from East St. Louis to the Reservation, but while it was momentarily stopped at the terminal and dock of the Transit Company at Oklahoma City, Oklahoma, it was seized by Johnson, Commissioner of Public Safety of the State of Oklahoma, Husted, Superintendent of the Bureau of Identification and Investigation of the Department of Public Safety of Oklahoma, West and Riggs, deputies under the Superintendent, and McGrew and Kolb, deputy sheriffs of Oklahoma County, Oklahoma,[3] and was transported to and placed in a vault in the county courthouse of Oklahoma County, where it is held under the claim that it is an illegal shipment of intoxicating liquor subject to confiscation and destruction.

Had the shipment been delivered at the Reservation, it would have been received by the secretary of the Club for delivery to the officers who had placed the order.

This action was commenced by the Transit Company against the state enforcement officers for a mandatory injunction requiring them to hold the shipment in status quo pending the determination of the action and requiring them to return the shipment to the Transit Company and to refrain from interfering with the Transit Company's possession and movement of such shipment in interstate commerce to its destination.

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[2]Hereinafter called the Transit Company.

[3]Hereinafter called the state enforcement officers.

From a judgment granting the relief prayed for, the state enforcement officers have appealed.

The Reservation is located wholly within the exterior boundaries of Oklahoma. It was acquired by the United States from France long before Oklahoma became a state. Since prior to the admission of Oklahoma as a state it has been, and it now is used exclusively for military purposes and for the performance of the functions of the War Department of the United States. In 1913, the state of Oklahoma enacted a statute ceding exclusive jurisdiction over the Reservation, with certain exceptions not here material, to the United States.[4]

Oklahoma has power under the Twenty-first Amendment to forbid all importations of intoxicating liquor into the state or to adopt a lesser degree of regulation than total prohibition.[5] It may also require a permit for the transportation of intoxicating liquor in interstate commerce through the state as a means of establishing the identity of those who engage in such transportation and their routes and points of destination and of enabling local officers to take appropriate measures to insure transportation without diversion.[6]

Oklahoma has not enacted any statutes regulating the transportation of intoxicating liquor through the state. It requires a permit for transportation of liquor into the state.[7]

While the Twenty-first Amendment increased the power of the state with respect to importation into the state, it did not extend the territorial jurisdiction of the state. Territorial jurisdiction over the Reservation is in the United States, a distinct sovereignty, and the Twenty-first Amendment gave the state no power to prohibit importation of intoxicating liquor into the Reservation or to regulate the transportation, possession, sale, or other disposition of such liquor within the Reservation. There was no transportation into Oklahoma for delivery or use therein. The shipment

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[4] See 80 O. S. 1941, Sec. 4;
Act of June 25, 1936, 49 Stat. 1938, 40 U. S. C. A. Sec. 290;
Act of October 9, 1940, 54 Stat. 1059, 4 U. S. C. A. Secs. 13-13.

[5] State Board of Equalization v Young's Market Co., 299 U. S. 59;
Mahoney v. Joseph Triner Corporation, 304 U. S. 401.

[6] Duckworth v. Arkansas, 314 U. S. 390, 396.

[7] 37 O. S. 1941, Secs. 41-45.

was consigned for delivery in the Reservation.[8] We conclude, therefore, that the seizure by the state enforcement officers was without warrant of law and was wholly illegal.

The Assimilative Crimes Act[9] provides that whoever, within the territorial limits of a state, within or upon any lands reserved, or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, shall do any act or thing which is not made penal by any act of Congress, but which if committed within the jurisdiction of the state, by the laws thereof in force on February 1, 1940, would be penal, shall be deemed guilty of a like offense and subject to a like punishment.

The Assimilative Crimes Act adopted, for the government of the designated places under the exclusive or concurrent jurisdiction of the United States, the criminal laws in force, on the date mentioned in the Act, in the several states within which such places are situated, in so far as such laws have not been displaced by specific acts of Congress. By adoption they became Federal laws in force in the designated places.[10]

It is urged that the statutes of Oklahoma hereinafter referred to were put in force in the Reservation as Federal statutes by the Assimilative Crimes Act, and that by virtue thereof it is unlawful to import intoxicating liquor into the Reservation, to keep or maintain a club room in which intoxicating liquor is received, kept, or stored for distribution or division among the members of the Club, to receive intoxicating liquor from a common carrier, or to possess intoxicating liquor; and it is asserted that relief should have been denied by virtue of the maxim *ex dolo malo non oritur actio*. In dealing with this contention we assume, but do not decide, that the Oklahoma penal statutes relating to intoxicating liquor were put in force in the Reservation as Federal statutes by the Assimilative Crimes Act; neither do we decide that, if importation into the Reservation would violate

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[8] See Collins v. Yosemite Park Co., 304 U. S. 518.

[9] 18 U. S. C. A. Secs. 451, 468.

[10] Franklin v. United States, 216 U. S. 559, 568;
United States v. Press Publishing Company, 219 U. S. 1, 8;
Puerto Rico v. The Shell Company, 302 U. S. 253, 266.

a Federal statute, injunctive relief against the unlawful acts of the enforcement officers should be denied.[11]

Sec. 4, ch. 153, O. S. L. 1933 (37 O. S. A. §31) provides that it shall be unlawful for any person to have or keep in excess of one quart of intoxicating liquor "whether such liquor be intended for the personal use of the person so having and keeping the same or not." The foregoing section was originally enacted as § 4, ch. 70, O. S. L. 1910-11. In Ex parte Wilson, 6 Okl. Cr. 451, 119 P. 596, it was held unconstitutional on the ground that it is not within the police power of the state to prohibit possession of intoxicating liquor for personal use.

Sec. 5, ch. 70, O. S. L. 1910-11 (37 O. S. A. § 32)[12] was unconstitutional for the same reason. Morse v. State, 63 Okl. Cr. 445, 77 P. 2d 757, 763, which cited Ex Parte Wilson, supra, with approval. See, also, Brikey v. State, 55 Okl. Cr. 451, 32 P. 2d 743, 744. It was superseded by § 6, ch. 26, O. S. L. 1913, as amended by § 3, ch. 153, O. S. L. 1933 (37 O. S. A. § 82).[13] The last-mentioned section does not make mere possession of intoxicating liquor unlawful; it merely makes possession of in excess of one quart of intoxicating liquor prima facie evidence of an intention to convey, sell, or otherwise dispose of such liquor; and the Oklahoma Criminal Court of Appeals has repeatedly held that mere possession of intoxicating liquor without an intent to sell, barter, or give away such liquor does not constitute an offense under the Oklahoma statutes.[14] We conclude, therefore, that the possession of intoxicating liquor for per-

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[11] Cf. Leisy v. Hardin, 135 U. S. 100;
Bowman v. Chicago and Northwestern Ry. Co., 125 U. S. 465;
McFarland v. American Sugar Refg. Co., 241 U. S. 79, 84-5;
Barnett v. State, —— Ala. ——, 9 So. 2d 267, 268;
McCanless v. Graham, —— Tenn. ——, 146 S. W. 2d 137, 138.

[12] It provided that it should be unlawful for any person to have or keep in or about his place of residence more than one gallon of intoxicating liquor.

[13] Whitwell v. State, —— Okl. Cr. ——, 114 P. 2d 489, 490;
Young v. State, —— Okl. Cr. ——, 123 P. 2d 294, 299.

[14] Whitwell v. State, —— Okl. Cr. ——, 114 P. 2d 489, 490;
Haltom v. State, 58 Okl. Cr. 117, 50 P. 2d 744, 746;
Hull v. State, 61 Okl. Cr. 12, 65 P. 2d 423, 425;
Stump v. State, —— Okl. Cr. ——, 92 P. 2d 616, 619;
Knighton v. State, —— Okl. Cr. ——, 79 P. 2d 1030, 1032;
Robinson v. State, —— Okl. Cr. ——, 108 P. 2d 196, 198.

sonal use and not for unlawful sale or other disposition is not prohibited in Oklahoma and, therefore, is not prohibited within the Reservation by virtue of the Assimilative Crimes Act.

Sec. 1, ch. 186, O. S. L. 1917 (37 O. S. A. § 38) provides that it shall be unlawful for any person to receive within Oklahoma any intoxicating liquor from a common or other carrier, or to possess in Oklahoma any intoxicating liquor received from a common or other carrier, and that its provisions shall apply to "such liquors intended for personal use, as well as otherwise, and to interstate as well as intrastate shipments or carriage." Since, under the decisions in Ex parte Wilson and Morse v. State, supra, possession of intoxicating liquor for personal use may not be prohibited, it would seem that this section is unconstitutional. If it is beyond the power of the legislature to make unlawful the possession of intoxicating liquor for personal use, it must likewise be beyond its power to make unlawful the possession of intoxicating liquor for personal use received from a common carrier.

Sec. 3610, O. R. L. 1910, as amended by § 1, ch. 13, O. S. L. 1927 (37 O. S. A. § 6), provides that it shall be unlawful to keep or maintain any club room where intoxicating liquor is received, kept, or stored for sale or for distribution or division among members of such club. We cannot say upon the facts here presented that the receipt of such shipment by the secretary of the Club and the delivery to the officers of their several orders embraced in the shipment would constitute a violation by the Club of the foregoing section. It seems to us that under the facts it could not be said that the Club received, kept, or stored the liquor for sale or for distribution to its members. The distribution was not to be made among the members of the Club, but among the officers who had given the order. The Club's secretary merely acted as their agent. Indeed, counsel for the state enforcement officers in their brief say, "The club, of course, appears to have no actual connection with this liquor."

Sec. 3605, O. R. L. 1910, as amended by § 2, ch. 163, O. S. L. 1933 (37 O. S. A. § 1) makes it unlawful to "ship, or in any way convey" intoxicating liquor "from one place within this state to another place therein." This section deals entirely with intrastate transportation. It has no applica-

tion to transportation from without the state of Oklahoma into such state, or into the Reservation.

Sec. 1, ch. 16, O. S. L. 1939,[15] provides that it shall be unlawful to import into the state of Oklahoma intoxicating liquor containing more than four per cent. of alcohol by volume, without a permit therefor secured as provided in the Act. The Act provides for an application to the State Tax Commission for such a permit and for the issuance of the permit by the Tax Commission. We think it clear that this Act can have no application within the Reservation. Congress has made no provision for a permit and Oklahoma has no jurisdiction to require or grant permits for the importation of intoxicating liquor into the Reservation, or to otherwise regulate such importation.[16] Since there is no way to obtain a permit to import intoxicating liquor into the Reservation, one who imports liquor into the Reservation should not be held criminally responsible for not securing a permit, which he could not obtain. To hold otherwise would make the Oklahoma statute, by virtue of the Assimilative Crimes Act, not a prohibition against importation into the Reservation without a permit, but a total prohibition against such importation.

By the provisions of 10 U. S. C. A. § 1350, 31 Stat. 758, the sale of beer, wine, or intoxicating liquors in any post exchange, canteen, or army transport is prohibited. Here, there was no sale within the Reservation. The sale was consummated in East St. Louis. It was contemplated only that there should be a transportation of the intoxicating liquor into the Reservation and a delivery thereof to the Club secretary as agent for the army officers who placed the order. This, in our opinion, did not constitute a violation of § 1350, supra.

Accordingly, we conclude that the transportation of the intoxicating liquor into the Reservation and the delivery thereof to the Club secretary for delivery to the officers who joined in the order would not constitute a Federal offense under the Assimilative Crimes Act, or under § 1350, supra.

The judgment is AFFIRMED.

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[15] 37 O. S. 1941, Secs. 41-48.
[16] Collins v. Yosemite Park Co., 304 U. S. 518.

Bratton, Circuit Judge, concurring:

The United States acquired by cession from France the lands comprising the Fort Sill Military Reservation in Oklahoma, and since long prior to the admission of the state into the Union, the Reservation has been used continuously and exclusively for military purposes of the United States. By statute, the state ceded to the United States exclusive jurisdiction over all territory owned by the United States and comprising the Reservation so long as the United States should own and hold the Reservation for military purposes, except that the state reserved the right to serve civil or criminal process therein in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in the state but outside the Reservation, and the further right to tax railroad companies and other corporations and their franchises and property within the Reservation. 80 O. S. 1941 § 4. The United States did not expressly accept the cession but that was unnecessary as it will be presumed in the absence of any dissent. Fort Leavenworth R. R. Co. v. Lowe, 114 U. S. 525. By act of Congress, the United States consented that the several states should have authority to make their Workmen's Compensation Acts applicable to lands and premises owned by the United States within the exterior boundaries of such states. 49 Stat. 1938, 40 U.S.C.A. § 290. Oklahoma accepted the cession and extended its Workmen's Compensation Act accordingly. 85 O.S. 1941 § 4. And by act of Congress, the United States consented that the several states be empowered to extend their income, sales, and use tax acts to Federal areas within such states. 54 Stat. 1059, 4 U.S.C.A. §§ 13, 14. Aside from these exceptions, none of which has any material bearing here, the laws of Oklahoma as state laws do not have any force or effect within the Reservation. Fort Leavenworth R. R. Co. v. Lowe, supra; Collins v. Yosemite Park Co., 304 U. S. 518.

Section 272 of the Criminal Code, 18 U.S.C.A. § 451, and section 289 of such code, 18 U.S.C.A. § 468, commonly called the Assimilative Crimes Act, together, provide in effect that the doing or failure to do any act or thing on lands reserved or acquired for the exclusive use of the United States and under the exclusive jurisdiction thereof, which is not made penal by an act of Congress but which if com-

mitted within the jurisdiction of the state in which such lands are situated would constitute a penal offense, shall constitute a like offense and be subject to like punishment.

An existing statute in Oklahoma, 37 O.S. 1941 § 41, provides that it shall be unlawful to import or transport into the state intoxicating liquor containing more than four per cent of alcohol by volume, without a permit first secured therefor as thereinafter provided. And there are other state statutes making it penal to do certain things in respect to intoxicating liquor but it is unnecessary to detail them. However, the Assimilative Crimes Act does not make these state statutes effective as state laws within the Reservation. Where that act applies, it adopts as laws of the United States for the government of designated places under the exclusive jurisdiction of the United States the criminal laws of the respective states in which such places are situated. Under its provisions, the laws of the state become laws of the United States in respect of such a place. They have no effect whatever as laws of the state. Franklin v. United States, 216 U. S. 559; United States v. Press Publishing Co., 219 U. S. 1; Puerto Rico v. Shell Co., 302 U. S. 253.

The Twenty-first Amendment of the Constitution of the United States, and the Act of August 27, 1935, 49 Stat. 877, 27 U.S.C.A. § 122, each prohibit the transportation or importation of intoxicating liquor into a state in violation of the laws of such state. A state is therefore free to forbid the importation of intoxicating liquor in interstate commerce into its territorial boundaries or it may enact regulatory provisions for such importation. State Board v. Young's Market Co., 299 U. S. 59; Mahoney v. Triner Corp., 304 U. S. 401; Indianapolis Brewing Co. v. Liquor Control Commission, 305 U. S. 391. And it may impose reasonable regulations intended to safeguard the movement of such liquor in interstate commerce through the state, provided they do not constitute a substantial burden on such commerce. Duckworth v. Arkansas, 314 U. S. 390. But a state has no power to forbid the transportation in interstate commerce of intoxicating liquor through its territorial boundaries. United States v. Gudger, 249 U. S. 373; Williams v. Commonwealth, 192 S. E. 795. And that is true even though the shipment is enroute to a destination where

the manufacture and sale of such liquor is prohibited by state law. McCanless v. Graham, 146 S. W. (2d) 137; Barnett v. State, 9 So. (2d) 267.

This shipment crossed state lines and was in every essential respect a movement in interstate commerce. It originated in Illinois, and its destination was a point within the geographical boundaries of Oklahoma but wholly beyond the jurisdiction or control of the state in respect of the sale, possession, or use of intoxicating liquor. The state had no power, either under the sweep of the Twenty-first Amendment, as an attribute of sovereignty, or otherwise, to interfere by seizure and confiscation with such interstate commerce under color of preventing the importation of intoxicating liquor in violation of its local law. Cf. Collins v. Yosemite Park Co., supra.

Murrah, dissenting:

The State of Oklahoma has asserted the power to seize and confiscate a shipment of intoxicating liquor, while being transported by a common carrier to the Ft. Sill Military Reservation, which is enclaved within the State of Oklahoma. The asserted power to seize and confiscate the shipment of liquor in question is an attempted exercise of the police power of the State in its purest form, because it relates to a declared public policy, affecting the public morals of the State's inhabitants. The police power of the state is an indispensable prerogative of state sovereignty, and "at times the most insistent, and always one of the least limitable of the powers of government." Eubank v. Richmond, 226 U. S. 137, 142; See also Sligh v. Kirkwood, 237 U. S. 52, 59; Classon v. Indiana, 306 U. S. 439; Ziffrin Inc. v. Reeves, 308 U. S. 132. The wisdom of this declared policy is of course within the peculiar competence of the people of Oklahoma. The effect of the judgment of the lower court, as upheld by the majority, is to enjoin the asserted police power of the State, ancillary to the enforcement of its criminal laws, on the grounds that the laws are rendered inoperative by force of the transcendent Federal law.

It is difficult to discern from the expressions of the majority whether the transcendent power to be vindicated by

injunctive process springs from the paramount power of Congress to regulate interstate commerce, or the exclusive power of Congress to exercise authority over all places expressly committed to its jurisdiction by the Federal Constitution. (Art. 1, Sec. 8, Clause 17; Art. 6, Clause 2). See Pacific Coast Dairy v. Dept. of Agriculture, 318 U. S. 285; Cf. Pennsylvania Dairies v. Milk Control Commission, 318 U. S. 261.

In order to clearly define our differences, it should be here noted that I fully agree that the Ft. Sill Military Reservation, although located within the geographical boundaries of the State of Oklahoma, is an enclave wholly and exclusively within the jurisdiction of the Federal government, and that the State of Oklahoma is powerless to regulate any activities conducted thereon, except in respect to matters not material here. Furthermore, the shipment of liquor originated in Illinois, and at the time of its seizure was being transported by common carrier to the Ft. Sill Reservation; was thus moving in interstate commerce, and was entitled to protection and immunity as such, if it be regarded as a legitimate article of interstate commerce, the transportation of which is incidental to legitimate activities conducted within the reservation. Our point of difference is, that in my judgment the State of Oklahoma, by its Constitution and laws, makes it unlawful to possess, transport, furnish, or receive this particular shipment of intoxicating liquor, and it is therefore contraband and subject to seizure and confiscation under the laws of the State, and the Federal Government has by its laws not only consented to the operation of Oklahoma laws in respect to the particular commodity involved, but has also made the same acts a Federal offense when committed within the boundaries of the enclave. Consequently, the shipment is not a legitimate article of interstate commerce; there is no governmental function to protect; no legitimate interstate activity to immunize; and, no Federal legislation or policy to vindicate.

By its Constitution, Oklahoma has prohibited and declared unlawful the manufacture, sale, barter, giving away, or furnishing of intoxicating liquor within the State,[1] and by its laws has declared unlawful the importation into the

[1] Prohibition Ordinance to the Oklahoma Constitution. Sch. 43.

State of any intoxicating liquors for beverage purposes;[2] or to receive, directly or indirectly, any liquors, the sale of which is prohibited by the laws of Oklahoma, from a common or other carrier, or to possess the same, whether such liquors are intended for personal use or otherwise.[3] Oklahoma has also declared that the possession of more than one quart of intoxicating liquor is prima facie evidence of its illegal possession;[4] and it is unlawful to keep or maintain any club room where liquor is kept or stored for sale, or for distribution or division among the members of such club.[5] Thus by its network of laws, Oklahoma has made it plain that the possession of intoxicating liquors for beverage purposes is contrary to its public policy.

By force of the Assimilative Crimes Act,[6] any act or thing committed or omitted within the Ft. Sill Military Reservation, which is not made penal by an act of Congress, but which if committed or omitted within the State of Oklahoma, would be a violation of its criminal laws, is a violation of Federal law and punishable as such. Furthermore, by express Federal enactment, it is unlawful for any person to sell or deal in beer, wine, or any intoxicating liquors on the Military Reservation. Act of Feb. 2, 1901, 31 Stat. 758 (10 U.S.C.A. 1350). It follows therefore that it is a violation of the Federal law to import intoxicating liquors into the Reservation; to receive intoxicating liquors from a common or other carrier, whether intended for personal use or otherwise; to sell or otherwise furnish the same; and, the possession of more than one quart of intoxicating liquor on

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[2] Laws 1939, Sec. 1-5 (37 U.S.C.A. 41-45. See Hayes v. United States, 112 F. 2d 417; Epps v. United States, 112 F. 2d 931; Flippin v. United States, 121 F. 2d 742, cert. denied 62 S. Ct. 184, 314 U. S. 677, 86 L. Ed. 542; Hinkle v. United States, 115 F. 2d 217.

[3] Laws 1917, ch. 186, Sec. 1 (37 O. S. A. 38). See DeHasque v. Atchison Ry. Co., 173 P. 73; Baldridge v. State, 194 P. 217; Walker v. State, 197 P. 520.

[4] Laws 1913, ch. 26, p. 48, Sec. 6; Laws 1923-24, ch. 123, p. 144, Sec. 1; Laws 1933, ch. 153, p. 339, Sec. 3. (37 O. S. A. 82). See Morse v. State, 77 P. 2d 757; Whitwell v State, 114 P. 2d 489, 490; Haltom v. State, 50 P. 2d 744, 746; Hull v. State, 65 P. 2d 423, 425; Stump v. State, 92 P. 2d 616, 619; Knighton v. State, 79 P. 2d 1030, 1032; Robinson v. State, 108 P. 2d 196, 198.

[5] Sec. 3610, R. L. 1910; Laws of 1927, ch. 13, Sec. 1. (37 O. S. A. 6).

[6] 18 U.S.C.A. 468, as last amended June 6, 1940, 54 Stat. 234. See United States v. Paul, 6 Pet. 141; Franklin v. United States, 216 U. S. 559, 568; United States v. Press Publishing Co., 219 U. S. 1, 8.

the reservation is prima facie evidence of its illegal possession. Furthermore, it is unlawful to maintain a club room in which intoxicating liquor is kept, or stored, for distribution among the members of the club.

It thus becomes sufficiently plain that the transportation of the intoxicating liquor is not incidental to any legitimate activities upon or within the Military Reservation, but would be illegal and contraband at the point of its destination. It is therefore not a legitimate article of interstate commerce. Interstate immunity against the operation of state criminal laws does not extend to articles moving in interstate commerce to an unlawful destination. If this be true, then the maxim, ex dolo malo non oritur actio, has cogent application, and there is no justifiable basis for injunctive relief by a Federal court.

In order to make out a case in equity, the majority hold that it is not unlawful to possess the liquor in question for one's personal use in Oklahoma, and it is therefore not unlawful to possess it on the Military Reservation. This conclusion is reached by holding the State statute (Laws of 1917, ch. 186, p. 350, Sec. 1 (37 O. S. A. 38), making it unlawful to receive the liquor from a common or other carrier, or to possess it, whether intended for personal use or otherwise, unconstitutional. Thus, it is said that the shipment violated no law—State or Federal; that its seizure and confiscation by the State officials was an unwarranted interference with interstate commerce, and the common carrier is therefore entitled to injunctive relief. It is a sufficient answer to say that state criminal laws are not lightly nullified by Federal courts of equity on the grounds that they are unconstitutional. The State Act, thought to be unconstitutional, became law in 1917; it has been before the Oklahoma courts for interpretation and construction, its constitutionality has not been challenged, and I do not think we are warranted in lightly setting it aside in order to justify injunctive relief in these circumstances. Moreover, no one is on trial for the violation of any of these acts. We are concerned with their validity only insofar as they express the public policy of the sovereign State of Oklahoma. Our purpose is to ascertain whether the power asserted in pursuance of these acts, so offends the paramount Federal

law as to justify the exercise of Federal equity powers to vindicate the national policy.

The 21st Amendment prohibits the importation or transportation of intoxicating liquors into the State of Oklahoma, and the State of Oklahoma is empowered to forbid such importation and transportation unfettered by the commerce clause of the Constitution. See also Webb-Kenyon Act, 49 Stat. 877 (27 U.S.C.A. 122). State Board v. Young's Market, 299 U. S. 59; Mahoney v. Triner Corp., 304 U. S. 401; Indianapolis Brewing Co. v. Liquor Control Commission, 305 U. S. 391; Ziffrin Inc. v. Reeves, 308 U. S. 132. But the 21st Amendment is not applicable where exclusive jurisdiction is in the United States, without power in the state to regulate alcoholic beverages. Collins v. Yosemite Park & Curry Co., 304 U. S. 518, 538. But unlike the Yosemite Park Case, there are no legitimate activities to protect, and no Federal legislative policy to vindicate. This is not a case of jurisdictional jealousy between the Federal and State sovereignties; the Federal Government has not asserted any power which may reside in it to insure the safe conduct of the shipment, nor has the consignee invoked the jurisdiction of the court. Only the interstate carrier seeks relief, and the equities of its case rest upon the legitimacy of the articles which it transported and seeks to protect.

The proper and orderly function of our dual system of government is achieved only through a delicate and meticulous balance of Federal and state sovereignty. Each is supreme within the domain delegated or reserved to it by the Federal Constitution, yet both operate to regulate the conduct and behavior of one united people. This delicate balance of power is attained, and maintained, only by a solicitous regard for the power of each sovereign in relation to the general welfare of the governed. The boundaries between the two are indistinct, and only broadly delineated by the Constitution. It is the province of the courts to maintain that essential balance by assuring to each sovereignty the full measure of respect for its laws and ordinances. This balance is not maintained by the utilization of Federal injunctive process, to insure safe conduct of a shipment of intoxicating liquor from without the State to a Military Reservation located within the State, whereat it would be a violation of Federal law to receive, sell, or

possess the same. Injunctions by Federal courts against the operation of state laws should, in all events, be based upon considerations of necessity for national dominance. In my judgment, the necessity does not exist here, and the injunction should have been denied.

Judgment.

Fifty-eighth Day, March Term, Monday, July 26th, A. D. 1943. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Alfred P. Murrah, Circuit Judges.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Oklahoma and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby affirmed; and that Yellow Cab Transit Company, a corporation, appellee, have and recover of and from Walter B. Johnson et al., appellants, its costs herein.

Order Staying Mandate.

Seventy-second Day, March Term, Saturday, August 28th, A. D. 1943. Before Honorable Orie L. Phillips and Honorable Walter A. Huxman, Circuit Judges.

This cause came on to be heard on the motion of appellants for a stay of the mandate herein and was submitted to the court.

On consideration whereof, it is now here ordered by the court that said motion be and the same is hereby granted and that no mandate of this court issue herein for a period of thirty days from this day, and that, if within said period of thirty days there is filed with the clerk of this court a certificate of the clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, with proof of service thereof under section 3 of rule 38 of the Supreme Court, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

Clerk's Certificate.

United States Circuit Court of Appeals, Tenth Circuit.

I, Robert B. Cartwright, Clerk of the United States Circuit Court of Appeals for the Tenth Circuit, do hereby certify the foregoing as a full, true, and complete copy of the transcript of the record from the District Court of the United States for the Western District of Oklahoma, and full, true, and complete copies of certain pleadings, record entries and proceedings, including the opinion (except full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States) had and filed in the United States Circuit Court of Appeals for the Tenth Circuit in a certain cause in said United States Circuit Court of Appeals, No. 2697, wherein Walter B. Johnson et al. were appellants, and Yellow Cab Transit Company, a corporation, was appellee, as full, true, and complete as the originals of the same remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Tenth Circuit, at my office in Denver, Colorado, this 8th day of September, A. D. 1943.

(Seal, U. S. Circuit Court of Appeals, Tenth Circuit)

ROBERT B. CARTWRIGHT,
Clerk of the United States Circuit Court of Appeals, Tenth Circuit.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 22, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted, and the case is assigned for argument immediately following No. 198 which is set to follow No. 134.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

Supreme Court, U. S.
FILED
OCT 22 1943
CHARLES ELMORE CROPLEY
CLERK

In the
Supreme Court of the United States
OCTOBER TERM, 1943

No. 447

WALTER B. JOHNSON, T. R. HUSTED, B. A. WEST, CHARLES RIGGS, GEORGE GOFF, MIKE McGREW, LEWIS KOLB, J. M. GENTRY AND IVAN KENNEDY,

Petitioners,

vs.

YELLOW CAB TRANSIT COMPANY, *a Corporation,*

Respondent.

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Attorney General of Oklahoma,

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Of Counsel.

October, 1943.

KING LAW BRIEF CO., Inc., 418 N.W. Third, Oklahoma City—Phone 3-2969

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In the
Supreme Court of the United States

OCTOBER TERM, 1943

No.

WALTER B. JOHNSON, T. R. HUSTED, B. A. WEST, CHARLES RIGGS, GEORGE GOFF, MIKE MCGREW, LEWIS KOLB, J. M. GENTRY AND IVAN KENNEDY,

Petitioners,

vs.

YELLOW CAB TRANSIT COMPANY, *a Corporation,*

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States.

I.

PRAYER

The petitioners, Walter B. Johnson, T. R. Husted, B. A. West, Charles Riggs, George Goff, Mike McGrew, Lewis Kolb, J. M. Gentry and Ivan Kennedy, pray that a writ of certiorari issue to review the judgment entered July 26, 1943, in the United States Circuit Court of Appeals for the Tenth Circuit (R. 54) in the above entitled cause.

II.

SUMMARY STATEMENT OF MATTERS INVOLVED

Primarily this case involves 225 cases of liquor. But the issues are incomparably more far-reaching and important.

The lands constituting the Fort Sill Military Reservation constituted a portion of the territory acquired from France in 1803 and known as the Louisiana Purchase. The military post was established at its present location in 1869, which was long prior to the establishment of the State of Oklahoma. Title to the lands constituting the reservation was effected in the United States through agreement with the Comanche, Kiowa and Apache Indians approved by Congress June 6, 1900 (31 Stat. at L., p. 676, Chapter 813, Section 6). No reference to the reservation was contained in the Organic Act providing for the establishment of Oklahoma Territory, or the Enabling Act (34 Stat. at L. 267), authorizing admission of the State of Oklahoma, consisting of Oklahoma and Indian Territories. These lands were en-

tirely within the boundaries of Oklahoma Territory and the State of Oklahoma. In 1913 the State Legislature ceded to the United States "exclusive jurisdiction" over said lands with certain reservations of the right of taxation and service of process, and the further provision that such cession should be effective only so long as the lands should be used by the United States for military purposes. By subsequent Congressional enactments (49 Stat. 1938, 40 U. S. C. A., § 290, and 54 Stat. 1059, 4 U. S. C. A., §§ 13 and 14), the State was vested with jurisdiction to apply its laws relating to workmen's compensation and income, sales and use taxes.

The F. A. S. Officers' Club is composed of Army officers stationed at the Fort Sill Military Reservation. The club is managed by a secretary, who is an Army officer in active service.

Prior to October 24, 1942, a number of officers stationed at the post gave to the club secretary written orders for varying quantities of intoxicating liquors, designating the brand and quantity desired, and accompanied by check or money to pay for such liquor. The secretary, acting for these officers, assembled, tabulated, totaled and telephoned these orders to M. B. Gintz Company at East St. Louis, Illinois. On October 24, the Gintz Company delivered to Yellow Cab Transit Company at East St. Louis 225 cases of intoxicating liquors, which it consigned to F. A. S. Officers' Club Mess at the Reservation.

While the shipment was in transit, but temporarily stopped at the terminal and dock of the transit company in

Oklahoma City, Oklahoma, it was seized by petitioners, as officers of the State of Oklahoma, and was transported to and placed in a vault in the county court house of Oklahoma County as an illegal shipment of intoxicating liquor subject to confiscation and destruction.

This action was commenced in the United States District Court for the Western District of Oklahoma by the Yellow Cab Transit Company against the said officers of the State of Oklahoma for a mandatory injunction requiring them to return the shipment to the transit company and refrain from interfering with its possession and transportation of such liquor. From a judgment granting the relief prayed for an appeal was taken to the United States Circuit Court of Appeals for the Tenth Circuit. On July 26, 1943, a judgment was entered by said court affirming the judgment of the District Court. Issuance of the mandate has been stayed by order of said Circuit Court, and the said shipment of liquor is still held by petitioners pending final disposition of this proceeding.

Ever since its admission into the Union the State of Oklahoma has, by constitutional provision and legislative acts, forbidden the manufacture, transportation and sale of intoxicating liquors.

In 1939 the Legislature passed an act (Chap. 16, Session Laws 1939, 37 O. S. 1941, §§ 41-48), relating to the importation and transportation of intoxicating liquor containing more than four per cent of alcohol by volume. Section 1 pro-

vides that it shall be unlawful to import or transport such liquors into the State of Oklahoma without a permit as subsequently provided in the act. Subsequent provisions authorized the issuance of permits for the importation of alcohol for pharmaceutical, scientific and mechanical purposes by druggists, scientific institutions and manufacturing agencies, and wine for sacramental use. All other importation of intoxicating liquor is absolutely prohibited. Sections 1 and 2 of said act are quoted in the Appendix hereto.

By the terms of the "Prohibition Ordinance" of the State Constitution, effective since statehood, and by statute (37 O. S. 1941, § 1), it is made unlawful:

> "to ship, or in any way convey, such liquor from one place within this state to another place therein except the conveyance of a lawful purchase as herein authorized; * * *."

The exception does not have reference to a purchase and shipment such as that involved in this case.

Section 4, Chapter 153, Oklahoma Session Laws 1933 (37 O. S. 1941, § 31), provides that:

> "It shall be unlawful for any person to have or keep in excess of one quart of spirituous, vinous, fermented or malt liquors, or any imitation thereof * * * which contain more than three and two-tenths (3.2%) per cent of alcohol, measured by weight, and which is capable of being used as a beverage * * * upon, in, or about his place of business, or any place of amusement, or recreation, or any public resort, or any club room, whether such liquor be intended for the personal use of the person so having and keeping the same or not; * * *."

Section 1, Chapter 13, Oklahoma Session Laws 1927 (37 O. S. 1941, § 6), makes it unlawful for any person:

"to directly or indirectly, keep or maintain by himself or by associating or combining with others, any club room or other place in which any liquor, the sale of which is prohibited by the laws of Oklahoma, is received, kept or stored, for the purpose of selling, bartering, giving away, or otherwise furnishing, or for distribution or division among members of any club or association by any means whatsoever, and any person who shall sell, barter, give away, or otherwise furnish, distribute or divide any such liquor so received, kept or stored, shall be guilty of a felony * * *."

Section 1, Chapter 186, Oklahoma Session Laws 1917 (37 O. S. 1941, § 38), provides that it shall be unlawful to receive any intoxicating liquor from a common or other carrier, and that its provisions shall apply to:

"such liquors intended for personal use, as well as otherwise, and to interstate as well as intrastate shipments or carriage."

10 U. S. C. A., § 1350 (31 Stat. 758), first enacted in 1899 and re-enacted with a slight amendment by the Act of February 2, 1901, has been and is the only Congressional Act relating to intoxicating liquors in such Reservation. Said section provides:

"The sale of or dealing in beer, wine or any intoxicating liquors by any person in any post exchange or canteen or Army transport or upon any premises used for military purposes by the United States, is prohibited. The Secretary of War is hereby directed to carry the provisions of this section into full force and effect."

By what is called the Assimilative Crimes Act, which has been in force for many years and was last re-enacted by the Act of June 6, 1940 (54 Stat. at L. 234; 18 U. S. C. A., § 468), Congress has adopted as Federal statutes within

such Federal areas the criminal statutes of the state in which the area is situated in the absence of any Federal statute relating thereto. We quote such act in the Appendix.

In the District Court the case was submitted upon an agreed statement of facts (R. 11-18). The District Court determined (R. bottom page 25) that the lands comprising the original Fort Sill Military Reservation were not within the boundaries of Oklahoma Territory; that (R. bottom page 26) said Reservation was never a part of or under the jurisdiction of the Territory or State of Oklahoma, except as such jurisdiction has been specifically ceded to the State by Congress.

The court did not consider the Assimilative Crimes statute or the above mentioned criminal statutes of the State and Federal government other than the 1939 act relating to importation of liquors into the State. The court concluded that (R. 35) the shipment of liquor in controversy was moving in interstate commerce at the time of the seizure; that the Military Reservation is under exclusive jurisdiction and dominion of the Federal government, and that the State has no jurisdiction over it except in limited respects where Congress has ceded same to the State; that the shipment was in transportation "through" the State of Oklahoma; that the shipment was lawfully moving in interstate commerce and not in violation of the laws of the State of Oklahoma and the United States, and the seizure of same was unlawful; that defendants in said action should be required to return

said shipment to plaintiff and enjoined from interfering with its delivery to its destination. A decree was entered accordingly (R. 36).

III.

STATEMENT OF BASIS OF JURISDICTION

We believe that this Court has and should exercise jurisdiction to review the judgment in question because of the following:

(1) The very great importance of the decision and issues involved.

(2) The Circuit Court of Appeals has decided important questions of local law in a way in conflict with applicable local decisions.

(3) Said court has decided an important question of Federal law which has not been, but should be, settled by this Court.

IV.

QUESTIONS PRESENTED

(1) Whether Fort Sill Military Reservation is a part of the State of Oklahoma or is entirely severed from the State and constitutes no part of the territory thereof though entirely within its boundaries.

(2) Whether Fort Sill Military Reservation is a "State" within the Interstate Commerce Clause of the United States Constitution.

(3) Whether the shipment of liquor involved in this case was moving in interstate commerce when seized by petitioners.

(4) Whether the possession and transportation of said shipment of intoxicating liquor constituted a violation of the laws of Oklahoma.

(5) Whether the possession and transportation of said shipment of intoxicating liquor into and in the Fort Sill Military Reservation would have constituted a violation of Federal statutes applicable thereto by Congressional enactment or adoption of State statutes.

(6) Whether the respondent herein, plaintiff in the District Court, is entitled to come into a court of equity and secure injunctive relief requiring the return of such shipment.

V.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT

This decision involves and determines the rights and powers of Oklahoma and the other states in connection with the existence, not simply of this particular Reservation, but of all Federal areas and unappropriated public lands within the boundaries of the several states. If the decisions of the District Court and Circuit Court of Appeals should be sustained, Oklahoma and the other states are dotted with areas which are as separate and distinct as if they were entirely beyond the borders of the states in which they are located.

Oklahoma and the other dry states would be unable to protect themselves against shipments of liquor ordered by their own citizens, but consigned for delivery in any post office, national park, unappropriated tract of public land or other Federal area within the State. Commerce originating within the State, but moving into the Federal area, would be interstate. Marriages, many of which have already been performed within these areas, will be invalidated. The importance of these questions, the disastrous results which arise through a separation of these areas from the State, are of such importance that petitioners feel that this Court should take jurisdiction.

The court decided important questions of local law in a way in conflict with decisions of the State court. In the opinion (R. 44-45) the court treated as unconstitutional Sections 31 and 38, Title 37, Oklahoma Statutes 1941. These statutes have been cited and applied by the Criminal Court of Appeals of the State of Oklahoma without being held or treated as unconstitutional.

The court further held (R. 45) Section 1 of said Title 37, Oklahoma Statutes 1941, to be applicable only to intrastate transportation and to have no application to transportation from without the State into the State. The Criminal Court of Appeals of this State has applied the statute to liquor originating outside the State, but being transported within the State.

The Circuit Court of Appeals has decided important questions of Federal law which should be adjudicated by this

Court. The status of this and similar Federal areas, the question as to whether they constitute states within the Interstate Commerce Clause, and issues arising in connection therewith, should be settled by this Court. The court further held that this shipment of liquor and its delivery and distribution in the Reservation would not be violative of the Federal statutes. There is no decision of this Court upon the question.

For these reasons it is respectfully submitted that this petition should be granted.

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BRIEF IN SUPPORT OF PETITION

OPINIONS

One opinion was delivered by the District Court and was written by District Judge Edgar S. Vaught and filed December 24, 1942. It appears on pages 18 to 35 of the record and is reported in 48 Fed. Supp. 594. The opinion of the Circuit Court of Appeals (Circuit Judges Phillips, Bratton and Murrah, Judge Phillips writing, Judge Bratton writing a concurring opinion, Judge Murrah dissenting), was filed July 26, 1943, and appears at pages 40 to 46 of the record. Judge Bratton's concurring opinion begins on page 47, and Judge Murrah's dissenting opinion on page 49. The opinion is reported in 137 Fed. (2d) 274

FACTS

As already stated, this case has arisen through seizure by State officers at Oklahoma City of 225 cases of intoxicating liquor in transit to Fort Sill Military Reservation in the State of Oklahoma. The facts and issues are set forth in the petition.

JURISDICTION

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, c. 229 (43 Stat. 938 [28 U. S. C. A., § 347]).

ARGUMENT

The issues involved are of very great importance not only to the State of Oklahoma, but to the states and people in other jurisdictions. If Federal areas, such as military reservations, naval bases, post offices, national parks, public lands, national defense projects, are to be held as entirely separate and foreign to the State within which they are located, such a situation with its many applications and disastrous results should at least not follow the decision of any court below the Supreme Court of the United States. This is further emphasized by the fact that the Judges of the Circuit Court of Appeals are not in accord. As an illustration of the seriousness of the matter, it is a fact of common knowledge that a large number of marriages have been performed in these areas. This has been done upon licenses issued pursuant to State statutes, and the ceremonies performed by chaplains, ministers or others authorized under State law. In Oklahoma, and many other states, such licenses have no validity outside of the county in which they are issued. Licenses issued by the court clerk at Lawton are valid only in Comanche County. If Fort Sill Military Res-

ervation, located in Comanche County, is no part thereof there exists no authority pursuant to which a marriage ceremony could be performed in the Reservation.

The exact status of these Federal areas has not been, but should be, determined by a decision of this Court. Several questions arise.

Are Fort Sill Military Reservation and these Other Federal areas parts of the State of Oklahoma?

The District Court started with a false premise. The court found (R. bottom page 25) that the lands comprising the original Fort Sill Military Reservation were not embraced within the boundaries of the Territory of Oklahoma, as established by the Act of Congress of May 2, 1890, 26 Stat. at L. 81, known as the Organic Act. This was entirely erroneous, the simple facts of geography being that the Reservation was entirely within the boundaries and not closer than 17 miles to the nearest one. From this premise the court reached the conclusion (R. bottom page 26) that such Reservation was never a part of or under the jurisdiction of the Territory or State of Oklahoma, except as specifically ceded to the State by Congress. This conclusion was directly contrary to the situation as recognized by the Circuit Court of Appeals of the Eighth Circuit in *St. Louis-San Francisco Ry. Co.* v. *Satterfield*, 27 Fed. (2d) 586, and to the holding of this Court with reference to Fort Leavenworth Military Reservation in the case of *Fort Leavenworth Ry.*

Co. v. *Lowe*, 114 U. S. 525, 29 L. ed. 264. The Reservation was clearly a part of the State of Oklahoma at the time of the enactment of the 1913 legislative act (Laws 1913, Chapter 52), ceding, with certain reservations, "exclusive jurisdiction" to the United States. The present status of the Reservation depends upon the construction given to said legislative act and the subsequent acts of Congress ceding back to the State jurisdiction to apply the State Workmen's Compensation Laws and Statutes relating to income, sales and use taxes.

The Oklahoma Supreme Court, in the case of *Ottinger Bros. et al.* v. *Clark et al.*, not yet officially reported, but found in 121 Pac. (2d) 94, has described the effect of the legislative act as "a mere suspension of State jurisdiction."

The decision of this Court in *Collins* v. *Yosemite Park and Curry Co.*, 304 U. S. 518, 82 L. ed. 1502, has been construed as supporting the contention that this Reservation is not a part of the State of Oklahoma. We believe this to be based upon a misconstruction and misapplication of the court's opinion. The question should be reviewed and settled by this Court.

Are Fort Sill Military Reservation and the other Federal areas "states" within the Interstate Commerce Clause of the Federal Constitution?

If the preceding question be answered in the affirmative this question loses its importance in so far as this case is concerned. If, however, such Federal areas are not parts

of Oklahoma the present question becomes important. The shipment was subject to seizure under the laws of Oklahoma unless it was traveling in interstate commerce, and, therefore, protected against the application of such laws. The mere fact that it had originated in Illinois and had crossed State lines prior to its seizure in Oklahoma would not give it such protection. Such interstate transportation must be a continuing fact at the time of seizure. The Interstate Commerce Clause (Article 1, Section 8, Clause 3), vests in Congress the power to regulate commerce "among the several states."

There is but one case in which this question has been decided. In *Grayburg Oil Co.* v. *State*, 296 S. W. 489 (no official report), the Texas Court of Civil Appeals held that a Military Reservation was not within the Interstate Commerce Clause. The case involved the right of the state to tax a shipment of gasoline from a refinery in Texas to Fort Sam Houston. The contention was made that it was an attempt to tax the Federal government or an agency or instrumentality thereof, and also an interference with interstate commerce. The state court held against both contentions. The decision was affirmed by the Commission of Appeals in an opinion reported in 3 S. W. (2d) 423. It was reversed in a memorandum opinion by this Court reported in 278 U. S. 582, 73 L. ed. 519, on the authority of *Panhandle Oil Company* v. *Mississippi*, 277 U. S. 218, 72 L. ed. 857, as an attempt to tax gasoline sold to the United States. This Court did not refer to the question of interstate commerce.

The Circuit Court decided important questions of local law and construed local statutes in a way in probable conflict with applicable local decisions.

In the petition (page 5) we have quoted the pertinent provisions of Section 4, Chapter 153, Oklahoma Session Laws 1933 (37 O. S. 1941, § 31), relating to the keeping of more than one quart of intoxicating liquor in a place of business, amusement, recreation or public resort or club room. The Circuit Court, in its opinion (R. 44), stated that this section had been held unconstitutional, and cited *Ex parte Wilson*, 6 Okla. Cr. 451, 119 Pac. 596. It is true that a similar section was in said opinion said to be unconstitutional. However, conditions have materially changed, the section which we have quoted was adopted in 1933 as a new act and has been cited by our Criminal Court of Appeals a number of times. *Morse* v. *State*, 63 Okla. Cr. 445, 77 Pac. (2d) 575; *Barnett* v. *State*, 71 Okla. Cr. 118, 109 Pac. (2d) 243. Its constitutionality has not been questioned.

We have also quoted in the petition (page 6) from Section 1, Chapter 186, Oklahoma Session Laws 1917 (37 O. S. 1941, § 39), making it unlawful to receive or possess any intoxicating liquor received from a common or other carrier. The opinion of the Circuit Court of Appeals (R. 45) treated this section as unconstitutional. In *Walker* v. *State*, 18 Okla. Cr. 661, 197 Pac. 520, the State Criminal Court of Appeals sustained a conviction for the violation of the provisions of this section. Its constitutionality was not questioned.

In its opinion (R. 45-46) the Circuit Court held that Section 2, Chapter 163, Oklahoma Session Laws 1933 (37 O. S. 1941, § 1), making it unlawful to ship or in any way convey intoxicating liquor from one place within this State to another place therein, had no application to transportation from without the State of Oklahoma into the State. This is in direct conflict with the construction and application of the statute by the State Criminal Court of Appeals. The State court has applied the statute regardless of the point of origin, the point of destination or the distance traveled. Movement from one point to another, even though neither point constitutes the origin or destination, is sufficient. In *Jentho* v. *State*, 19 Okla. Cr. 434, 200 Pac. 251, the court applied the statute to transportation of liquor originating in Texas and which had reached only a portion of the way across the bridge over Red River.

In *Huff* v. *State*, 9 Okla. Cr. 675, 133 Pac. 265, the said statute was applied to the transportation of liquor originating at Gainesville, Texas, and transported by defendant allegedly for distribution to a club of eight, each of whom had contributed a proportionate amount to pay for the liquor.

In *Barnett* v. *State*, 31 Okla. Cr. 413, 239 Pac. 680, the statute was held applicable even though the transportation might be for the purpose of personal use.

We feel that these statutes and the decisions of the State court construing them should not be lightly brushed aside, or the statutes held unconstitutional, and that the

matter is of such gravity as to entitle petitioners to have the matter reviewed by this Court.

By the Assimilative Crimes Act (18 U. S. C. A., § 468), which was last re-enacted June 6, 1940, it is provided that whoever, within the territorial limits of the State, within or upon any lands reserved or acquired for the use of the United States and under the exclusive jurisdiction and control thereof, shall do any act or thing which is not made penal by any act of Congress, but which if committed within the jurisdiction of the State, by the laws thereof in force on February 1, 1940, would be penal, shall be deemed guilty of a like offense and be subject to a like punishment. By virtue of said act the above criminal statutes of the State, together with other statutes relating to intoxicating liquor, were adopted as Federal statutes and made applicable as such within the Military Reservation and other Federal areas within the State. Such being true the transportation, delivery and possession of this truck load of liquor into and within the Military Reservation would have constituted a violation of the Federal statutes, even if perhaps technically evading the provisions of the Act of Congress (10 U. S. C. A., § 1350), quoted in the petition (page 6), prohibiting the sale of or dealing in beer, wine or any intoxicating liquor upon any premises used for military purposes by the United States.

In discussing the Assimilative Crimes Act, and the State statutes affected by it, the Circuit Court (R. 46) held that

Chapter 16, Session Laws 1939 (37 O. S. 1941, §§ 41-48), would have no application to the Reservation for the reason that said act pertains to the importation of liquor under permit, that there was no provision by which a permit could be obtained for importation into the Reservation, and that since there was no way to obtain a permit one importing such liquor into the Reservation should not be held criminally responsible for the lack of such permit. By the provisions of said act, however, the importation and transportation of intoxicating liquors into the State are absolutely prohibited, except that, as we have heretofore stated in the petition, wine might be imported under permit for sacramental purposes by religious organizations, and alcohol might be brought in under permit by certain persons and institutions for specified purposes. No persons or organizations could obtain permits for the importation or transportation of the liquors involved in this case, either into the State or into the Reservation. As to such liquors the 1939 act is strictly prohibitory and penal.

The respondent herein, plaintiff in the District Court, is not entitled to injunctive relief through a court of equity. This shipment of liquor was consigned to the F. A. S. Officers' Club, Fort Sill, which had not ordered the liquor, had no interest in it, and constituted, in so far as the facts appear, a wholly fictitious consignee. The officers who had originally signed orders for the liquor have made no claim or asked for any relief. Where they may now be this record does not show. The M. B. Gintz Company, who appears on the bill of lading as the shipper, has made no claim. In the brief filed in the Circuit Court of Appeals on behalf of respondent, in order to avoid the provisions of 10 U. S. C. A.,

§ 1350, *supra*, it was stated that this sale had been consummated in East St. Louis, and the Circuit Court of Appeals so found in its opinion (R. 46). If that be true, the shipper has no further interest in the liquor. No one is claiming the liquor except the respondent, which is the carrier and desires the liquor only for the purpose of unlawful transportation and delivery. It would hardly seem that under all the circumstances in this case the respondent is entitled to ask the aid of a Federal court of equity to interfere by injunction with the operation of State laws, and to aid respondent in the possession, transportation and delivery of this shipment of intoxicating liquor in violation of the law of the State and the policy and laws of the Federal government.

For these reasons it is respectfully submitted that this petition should be granted.

Respectfully submitted,

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October, 1943.

APPENDIX

Section 1, Chapter 16, Oklahoma Session Laws 1939:

"It shall be unlawful for any person, individual or corporation to import, bring, transport, or cause to be brought or transported into the State of Oklahoma, any intoxicating liquor, as defined by the laws of this state, containing more than four (4%) per cent of alcohol by volume, without a permit first secured therefor as hereinafter provided."

Section 2, Chapter 16, Oklahoma Session Laws 1939:

"Permits may be issued, as in this act provided, for such importation and transportation of alcohol for scientific or mechanical purposes by and to such scientific institutions, universities and colleges as are authorized to secure the same free of tax under the laws of the United States, and alcohol by and to hospitals and sanitariums for medicinal use in such hospitals and santariums, and for the importation and transportation of alcohol to and by any apothecary, druggist, pharmacist, or manufacturing agency, who shall need same for such purpose and, who shall have executed a bond to the State of Oklahoma, approved by the Tax Commission of the State of Oklahoma, in the sum of not less than one thousand ($1,000.00) dollars, conditioned that none of said alcohol shall be used or disposed of for any purpose other than in the compounding of prescriptions or other medicines, or in such manufacturing business, the sale of which prescriptions, medicines, or manufactured products would not subject him or it to the payment of the special tax required of liquor dealers by the United States. Permits may also be issued for the importation and transportation, or causing to be imported or transported into this state, of wine for sacramental purposes. No permit shall be issued to any person, or for any purpose, or for the importation of any intoxicating liquor, except as specifically authorized under this section."

"Whoever, within the territorial limits of any State, organized Territory, or district, but within or upon any of the places now existing or hereafter reserved or acquired, described in section 451 of this title, shall do or omit the doing of any act or thing which is not made penal by any laws of Congress, but which is committed or omitted within the jurisdiction of the State, Territory, or district in which such place is situated, by the laws thereof in force on February 1, 1940, and remaining in force at the time of the doing or omitting the doing of such act or thing, would be penal, shall be deemed guilty of a like offense and be subject to a like punishment. Mar. 4, 1909, c. 321, § 289, 35 Stat. 1145, as amended June 15, 1933, c. 85, 48 Stat. 152; June 20, 1935, c. 284, 49 Stat. 394; June 6, 1940, c. 242, 54 Stat. 234."

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In the
Supreme Court of the United States
OCTOBER TERM, 1943

No. 447

WALTER B. JOHNSON, T. R. HUSTED, B. A. WEST, CHARLES RIGGS, GEORGE GOFF, MIKE McGREW, LEWIS KOLB, J. M. GENTRY AND IVAN KENNEDY,

Petitioners,

vs.

YELLOW CAB TRANSIT COMPANY, a Corporation,

Respondent.

BRIEF OF THE PETITIONERS

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December, 1943.

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In the
Supreme Court of the United States
OCTOBER TERM, 1943

No. 447

WALTER B. JOHNSON, T. R. HUSTED, B. A. WEST, CHARLES RIGGS, GEORGE GOFF, MIKE MCGREW, LEWIS KOLB, J. M. GENTRY AND IVAN KENNEDY,

Petitioners,

vs.

YELLOW CAB TRANSIT COMPANY, a Corporation,

Respondent.

BRIEF OF THE PETITIONERS

I.
OPINIONS OF THE LOWER COURTS

The opinion of the District Court for the Western District of Oklahoma appears on pages 18 to 35 of the record and is reported in 48 Fed. Supl. 594. The opinion of the Circuit Court of Appeals (Circuit Judges Phillips, Bratton and Murrah, Judge Phillips writing, Judge

Bratton writing a concurring opinion, Judge Murrah dissenting), appears at pages 40 to 46 of the record. Judge Bratton's concurring opinion begins on page 47 and Judge Murrah's dissenting opinion on page 49. These opinions are reported in 137 Fed. (2d) beginning at page 274.

II.

STATEMENT OF THE CASE

Primarily this case involves 225 cases of liquor. But the issues are incomparably more far-reaching and important.

The lands constituting the Fort Sill Military Reservation constituted a portion of the territory acquired from France in 1803 and known as the Louisiana Purchase. The military post was established at its present location in 1869, which was long prior to the establishment of the State of Oklahoma. Title to the lands constituting the reservation was effected in the United States through agreement with the Comanche, Kiowa and Apache Indians approved by Congress, June 6, 1900 (31 Stat. at L., p. 676, Chapter 813, Section 6). No reference to the reservation was contained in the Organic Act providing for the establishment of Oklahoma Territory, or the Enabling Act (34 Stat. at L. 267), authorizing admission of the State of Oklahoma, consisting of Oklahoma and Indian Territories. These lands were entirely within the boundaries of Oklahoma Territory and the State of Oklahoma. In 1913 the state legislature ceded to the

United States "exclusive jurisdiction" over said lands with certain reservations of the right of taxation and service of process, and the further provision that such cession should be effective only so long as the lands should be used by the United States for military purposes. By subsequent congressional enactments (49 Stat. 1938, 40 U. S. C. A., § 290, and 54 Stat. 1059, 4 U. S. C. A., §§ 13 and 14), the state was vested with jurisdiction to apply its laws relating to workmen's compensation and income, sales and use taxes.

The F. A. S. Officers' Club is composed of army officers stationed at the Fort Sill Military Reservation. The club is managed by a secretary, who is an Army officer in active service (Agreed Statement, R. 11-18).

Prior to October 24, 1942, a number of officers stationed at the post gave to the club secretary written orders for varying quantities of intoxicating liquors, designating the brand and quantity desired, and accompanied by check or money to pay for such liquor. The secretary, acting for these officers, assembled, tabulated, totaled and telephoned these orders to M. B. Gintz Company at East St. Louis, Illinois. On October 24, the Gintz Company delivered to Yellow Cab Transit Company, as a common carrier by motor vehicle, at East St. Louis 225 cases of intoxicating liquors, which it consigned to F. A. S. Officers' Club Mess at the Reservation, instead of the officers who had signed the orders.

While the shipment was in transit, but temporarily stopped at the terminal and dock of the transit company in Oklahoma City, Oklahoma, it was seized by petitioners, as officers of the state of Oklahoma, and was transported to and placed in a vault in the county court house of Oklahoma County as an illegal shipment of intoxicating liquor subject to confiscation and destruction.

This action was commenced in the United States District Court for the Western District of Oklahoma by the Yellow Cab Transit Company against the said officers of the state of Oklahoma for a mandatory injunction requiring them to return the shipment to the transit company and refrain from interferring with its possession and transportation of such liquor. From a judgment granting relief prayed for an appeal was taken to the United States Circuit Court of Appeals for the Tenth Circuit. On July 26, 1943, a judgment was entered by said court affirming the judgment of the District Court. Issuance of the mandate has been stayed and the said shipment of liquor is still held by petitioners pending final disposition of this proceeding, of which this court accepted jurisdiction by writ of certiorari granted November 22, 1943.

Ever since its admission into the Union the state of Oklahoma has, by constitutional provision and legislative acts, forbidden the manufacture, transportation and sale of intoxicating liquors.

In the trial court the case was submitted upon an agreed statement of facts (R. 11-18). Said court held that the lands comprising the original Fort Sill Military Reservation were not within the boundaries of Oklahoma Territory (R. 25); that said reservation was never a part of or under the jurisdiction of the Territory or State of Oklahoma except as such jurisdiction has been specifically ceded to the State by Congress (R. 26); that the shipment of liquor was in transportation "through" the State of Oklahoma and moving in interstate commerce at the time of its seizure; that the seizure was unlawful and should be returned to the carrier.

The official opinion of the Circuit Court of Appeals held that the reservation was within the boundaries of the State but that since the 1913 Act of the Oklahoma Legislature territorial jurisdiction had been in the United States, a distinct sovereignty, that there was no transportation into Oklahoma for delivery or use therein and that the State enforcement officers were without authority to seize a shipment of liquor consigned for delivery in the reservation. The court further held that the shipment did not violate any of the statutes of Oklahoma or of the federal government. In reaching such conclusion the court treated as unconstitutional several sections of the Oklahoma statutes.

III.

QUESTIONS TO BE PRESENTED

(1) Fort Sill Military Reservation is a part of the State of Oklahoma even though the United States, by virtue of the 1913 Act of cession, has "exclusive jurisdiction" thereof except for a certain jurisdiction reserved in the State of Oklahoma by the act of cession, and further jurisdiction for certain purposes receded to the State by Acts of Congress.

(2) Fort Sill Military Reservation is not a "State" within the interstate commerce clauses of the United States Constitution and said shipment of liquor was not moving under the protection of interstate commerce when seized by petitioners.

(3) The possession and transportation of said liquor constitute a violation of the laws of Oklahoma.

(4) The possession and transportation of such liquor into and in the Fort Sill Military Reservation would have constituted a violation of the laws of the United States applicable thereto.

(5) Respondent is not entitled to come into a court of equity and secure injunctive relief requiring the return of such shipment.

IV.
ARGUMENT

We contend that Fort Sill Military Reservation is a part of the State of Oklahoma. We do not contend that Oklahoma, since the Act of Cession in 1913, has jurisdiction over the reservation except that reserved in the Act of Cession and the additional jurisdiction receded to the State by Congress. We contend that the possession and transportation of said liquor was in violation of the laws of the State of Oklahoma. That it was subject to such laws at the time and place of seizure and that it was not under protection as interstate commerce. We contend that certain of these laws are also in force in the Fort Sill Military Reservation, not as State statutes but as federal laws by adoption. Also that said shipment constituted a violation of the laws and policies of the United States with reference to military reservation, and that respondent is not entitled to injunctive relief in a court of equity.

(1) The district court in some way gained an entirely erroneous impression as to the status of Fort Sill Military Reservation during territorial days and after the admission of the State of Oklahoma, and therefore began its consideration of the issues involved with a false premise. It is quite true that if the reservation had not been within the boundaries of Oklahoma Territory it would never have constituted a part of the State of Oklahoma or been subject to the State's jurisdiction and there

would have been no occasion for the 1913 Act ceding jurisdiction to the United States. The contrary however was true, as recognized by the Circuit Court of Appeals. The reservation became a part of the State and the State acquired full jurisdiction thereof subject only to the ownership by the United States as a proprietor and its right to be unhampered in the use to which it was devoting the property. This was fully settled by this Court in its decision with reference to the Fort Leavenworth Reservation in the case of *Ft Leavenworth Ry. Co.* v. *Lowe*, 114 U. S. 525, 5 Sup. Ct. 995, 29 L. ed. 264. The situation was further recognized and discussed by the Circuit Court of Appeals in the case of *St. Louis S. F. Ry. Co.* v. *Satterfield*, 27 Fed. (2d) 586, the Court said in part:

> "However, the State of Oklahoma did cede authority over this reservation by a later statute, known as chapter 52 of the Session Laws of 1913 (Section 7531, Comp. St. Okla. 1921). This act is as follows:
>
> "'Section 1. That exclusive jurisdiction be, and the same is hereby ceded to the United States over all the territory now owned by the United States and comprised within the limits of the military reservation of Fort Sill, in Comanche county, and Fort Reno, in Canadian county, as declared from time to time by the President of the United States, and over such lands as may hereafter be acquired for the enlargement of said reservations: Provided, however, that the State of Oklahoma reserves the right to serve civil or criminal process within said reservations in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed *in said state but outside of such cessions and reservations;* Provided, further, that the State of Oklahoma reserves the right to tax railroad companies and other

corporations and their franchises and property on said reservations; and provided, further, that the jurisdiction herein ceded shall continue no longer than the United States shall own and hold said reservations for military purposes.'

"The provision of this statute, retaining to the state the right to tax property other than that of the government, has been held to be valid. The state in ceding dominion over reservation to the government was authorized to attach such conditions, as it saw fit, so long as they were not inconsistent with the use of the land for the intended purpose. *Ft. Leavenworth Railroad Co.* v. *Lowe, supra, Chicago, R. I. & P. Railway Co.* v. *McGlinn*, 114 U. S. 543, 5 S. Ct. 1005, 29 L. ed. 270; *Benson* v. *U. S.*, 146 U. S. 330, 13 S. Ct. 60, 36 L. ed. 994; *Palmer* v. *Barrett*, 162 U. S. 403, 16 S. Ct. 837; 40 L. ed. 1016. It follows that the State of Oklahoma did have the right to levy and collect taxes on defendant's property in the Ft. Sill military reservation."

It is thus clear that the Fort Sill Military Reservation constituted a part of the State of Oklahoma and subject to its jurisdiction, and that the jurisdiction now exercised by the national government was acquired through the above quoted Act of 1913. The language of that act further indicates that it was not contemplated that said reservation should cease to be a part of Oklahoma and severed from its territorial limits. The act reserved to the State the right to serve process in suits or prosecutions arising through rights acquired, obligations incurred or crimes committed *"in said State but outside of such cessions and reservations."* The latter portion of this quoted language would have been surplusage if such reserv-

ations had ceased to be a part of the State. The State further reserved the right to tax railroad companies and other corporations and their franchises and property on said reservation and again, as in the 1907-08 Act, Title 80, Secs. 1-3, O. S. 1941, relating to sites for post offices, etc., expressly provided that the jurisdiction so ceded should continue no longer than the United States should own and hold such reservations for military purposes.

Subsequent legislation has indicated that the national Congress has continued to consider the Fort Sill Military Reservation as a part of the State of Oklahoma, even though the United States had acquired "exclusive jurisdiction," subject to the reserved jurisdiction possessed by the State as set forth in the 1913 Act. As an illustration we find that in *1914* Congress made an appropriation by act appearing in 38 Stat. at L., page 597, for "Fort Sill Military Reservation, in *Oklahoma*," also for "Fort Sill Indian School Reservation, *in the State of Oklahoma.*" By act of March 17, *1916*, 39 Stat. at L., page 35, the State was authorized to construct and operate a fish hatchery on a part of the "Fort Sill Military Reservation, Oklahoma."

By the Act of February 27, *1931*, 46 Stat. at L., page 1423, the Secretary of War was authorized to construct a paved road across the "Fort Sill (Oklahoma) Military Reservation" and an appropriation was made to pay one-half the cost of such construction, "provided that the State of Oklahoma or civil subdivisions thereof or local

interest concerned, before construction of said road is commenced, shall contribute an amount sufficient to cover the remainder of the cost of improving said road, * * *." This act would have been fruitless and the State of Oklahoma or its subdivisions wholly unable to appropriate public funds to assist in the construction of said road if same had been outside of the State of Oklahoma.

By the Act of June 25, 1936, 49 Stat. at L., 1938 (40 U. S. C. A. § 290), Congress ceded back to the State jurisdiction over such reservation and other United States properties to the extent of applying the Workmen's Compensation Laws.

By the act of October 9, 1940, 54 Stat. at L., page 1059 (4 U. S. C. A. § § 13 to 18), Congress ceded back to the State jurisdiction to apply the State sales, use and income taxes, and enforce and collect the same in all federal areas within such State. The first section of said act reads as follows:

> "No person shall be relieved from liability for payment of, collection of, or accounting for any sales or use tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, on the ground that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a federal area; and such State or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any federal area within such State to the same extent and with the same effect as though such area was not a federal area."

The second section contains similar language with reference to income taxes.

The third section of said act exempts the United States or any instrumentality thereof.

The fourth section reads as follows:

> "The provisions of sections 13-18 of this title shall not for the purpose of any *other provision of law be* deemed to deprive the United States of *exclusive jurisdiction over* any federal area over which it would otherwise have exclusive jurisdiction or to limit the jurisdiction of the United States over any federal area."

The case of *Ft. Leavenworth Ry. Co.* v. *Lowe, supra,* has been cited many times by both federal and state courts as authority upon the subject of jurisdiction of the United States over such reservations. It involved the right of the State of Kansas to tax property within the reservation and is therefore entirely different from the case at bar. However, the language of the Court in discussing the question is pertinent. This reservation had a history closely parallel to that of the Fort Sill Military Reservation, having been acquired by cession from France in 1803 and later becoming a part of the State of Kansas when the State was established. In 1875 the Kansas legislature passed an act to cede jurisdiction to the United States over the territory of the Fort Leavenworth Military Reservation, said Act reading as follows:

> "That exclusive jurisdiction be, and the same is hereby ceded to the United States over and within all the territory owned by the United States, and included within the limits of the United States military reservation known as the Fort Leavenworth Reserva-

tion in said State, as declared from time to time by the President of the United States, saving, however, to the said State the right to serve civil or criminal process within said Reservation, in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said State, but outside of said cession and Reservation; and saving further to said State the right to tax railroad, bridge, and other corporations, their franchises and property, on said Reservation."

It will be noticed at once that the language is almost the same as that in the 1913 Act of the Oklahoma legislature, but the Kansas Act did not contain the final proviso of the Oklahoma Act to the effect that the jurisdiction ceded should continue no longer than the United States should own and hold the reservation for military purposes. We have examined the act in the Kansas statutes to see whether or not such a provision was in a subsequent section. There was none. In the course of an exhaustive discussion the Court said:

"As already stated, the land constituting the Fort Leavenworth Military Reservation was not purchased, but was owned by the United States by cession from France many years before Kansas became a State; and whatever political sovereignty and dominion the United States had over the place comes from the cession of the State since her admission into the Union. It not being a case where exclusive legislative authority is vested by the Constitution of the United States, that cession could be accompanied with such conditions as the State might see fit to annex not inconsistent with the free and effective use of the fort as a military post."

In conclusion the Court said:

"In their relation to the general government, the States of the Union stand in a very different position from that which they hold to foreign governments. Though the jurisdiction and authority of the general government are essentially different from those of the State, they are not those of a different country; and the two, the State and general government, may deal with each other in any way they may deem best to carry out the purposes of the Constitution. It is for the protection and interest of the States, their people and property, as well as for the protection and interests of the people generally of the United States, that forts, arsenals, and other buildings for public uses are constructed within the States. As instrumentalities for the execution of the powers of the general government, they are, as already said, exempt from such control of the States as would defeat and impair their use for those purposes; and if, to their more effective use, a cession of legislative authority and political jurisdiction by the State would be desirable, we do not perceive any objection to its grant by the legislature of the State. Such cession is really as much for the benefit of the State as it is for the benefit of the United States. It is necessarily temporary, to be exercised only so long as the places continue to be used for the public purposes for which the property was acquired or reserved from sale. When they cease to be thus used, the jurisdiction reverts to the State.

"The Military Reservation of Fort Leavenworth was not, as already said, acquired by purchase with the consent of Kansas. And her cession of jurisdiction is not exclusive legislative authority over the land, except so far as that may be necessary for its use as a military post; and it is not contended that the saving clause in the act of cession interferes with such use. There is, therefore, no constitutional prohibition against the enforcement of that clause. The right of the State to subject the railroad property

to taxation exists as before the cession. The invalidity of the tax levied not being asserted on any other ground than the supposed exclusive jurisdiction of the United States over the reservation notwithstanding the saving clause, the judgment of the court below must be affirmed."

Thus this Court held, even is the absence of a proviso such as that contained in the Oklahoma Act, that the jurisdiction of the United States was temporary and that whenever the lands should cease to be used for the purposes for which acquired, the jurisdiction would revert to the State. This, it seems to us, clearly evidences the fact that the Court did not regard the reservation as having been entirely severed from the State and as occupying the position of a new "State" or territory.

In the immediately ensuing case of *Chicago, R. I. & P. Railway Company* v. *McGlinn*, 114 U. S. 542, which was an action for damages for the killing of a cow within the reservation, the Court cited the Fort Leavenworth case and said, in part:

"When such legislative power is acquired in any other way, as by an express act ceding it, its cession may be accompanied with any conditions not inconsistent with the effective use of the property for the public purposes intended. We also held that it is competent for the legislature of a State to cede exclusive jurisdiction over places needed by the general government in the execution of its powers, the use of the places being, in fact, as much for the people of the State as for the people of the United States generally, and such jurisdiction necessarily ending when the places cease to be used for those purposes."

The case of *United States* v. *Andem*, 158 Fed. 996, was a prosecution for murder committed in a post office. In applying the New Jersey statute pursuant to the federal act adopting and allowing State laws, the Court cited both the *Fort Leavenworth* and the *McGlinn* cases, *supra*, and quoted the language we have heretofore set forth.

Those two cases were also applied by the Circuit Court for the Eastern District of Virginia in *Crook Harner & Company* v. *Old Point Comfort Hotel*, 54 Fed. 604. Paragraph 1 of syllabus reads:

> "The clause in the federal constitution (Article 1, § 8, Cl. 17) giving the United States exclusive jurisdiction over all places purchased by the consent of the legislature of the state in which the same shall be for the erection of forts, arsenals, etc., has only the meaning of an acquisition of land by actual purchase accompanied by a cession of jurisdiction by the state; and where land is acquired by the United States directly from the state as owner by an act of cession, (as in the case of Fortress Monroe), the constitutional provision does not apply, and the United States holds the land only by the tenure prescribed in the act of cession. *Railroad Co.* v. *Lowe*, 5 Sup. Ct. Rep. 995, 114 U. S. 525, and *Railroad Co.* v. *McGlinn*, 5 Sup. Ct. Rep. 1005, 114 U. S. 542, followed."

In the body of the opinion the Court referred to the above two cases and said in part:

> "The Court held that in this class of cases the United States takes the lands only under such a tenure, limited or unlimited, as the state confers by each special act of cession, and that such title is to be dealt with by the courts precisely as if the land had been ceded by the state to a private individual."

In *Jewell* v. *Cleveland Wrecking Company et al.*, 28 Fed Sup. 364, the Court said in paragraph 2 of the syllabus:

"The national government in acquiring post office sites for its needs does not undertake to set the acquired territory entirely apart as free in every respect from the dominion and control of the local sovereignty, or to interfere, supervise, or control the rights of individuals arising upon the property, but merely proclaims its superior jurisdiction so as to give it entire freedom in using the property as an instrumentality for its operation."

In the body of the opinion the Court said in part:

"As a very practical proposition, the national government, in acquiring post office sites for its needs, does not undertake to extripate the territory thus acquired and set it entirely apart as free in every respect from the dominion and control of the local sovereignty. All it does, is to proclaim its superior jurisdiction so as to give it entire freedom in using the property as an instrumentality for its operations. The national government does not undertake to interfere, supervise or control the rights of individuals arising upon the property. It has provided no code of laws for enforcing such rights. In the case of the *Chicago R. I. & P. Railway Company* v. *McGlinn, supra*, it is to be noted that the case was tried in a STATE COURT OF KANSAS. The Railway Company did not attempt to remove the case because the amount in controversy was below the jurisdiction of the federal court. On writ of error it carried the case to the Supreme Court of the United States where the judgment of the state court was affirmed. By such affirmance, the Supreme Court acknowledged the jurisdiction of the state court. In recognizing such jurisdiction it quite effectively held that the government of the State of Kansas did extend over national territory and was operative thereon."

In *Valley County* v. *Thomas, County Treasurer et al.*, 97 Pac. (2d) 345, the supreme court of Montana said in paragraphs 14 and 15 of the syllabus:

> "Statutes whereby a state relinquishes jurisdiction of land to federal government are to be strictly construed and it will not be presumed, in absence of clearly expressed intent, that states have relinquished sovereignty over such land.
>
> "The presumption in favor of a state retaining jurisdiction over lands purchased by United States with state's consent is particularly strong where the jurisdiction in question is that of the state whose sovereignty is complete except as clearly abdicated to federal government by the United States Constitution, or by legislative act of cession."

In *James* v. *Dravo Contracting Company*, 58 Sup. Ct. 208, 302 U. S. 134, 82 L. ed. 155, paragraph 6 of the syllabus reads:

> "If lands are acquired by the United States otherwise than with consent of legislature of state, and jurisdiction is ceded by the state to the United States, the terms of the cession, to the extent that they may lawfully be prescribed, that is, consistently with the carrying out of the purpose of the acquisition, determine the extent of the federal jurisdiction."

From the body of the opinion we quote further in the "Appendix" to this brief, page ii.

A review of most of these cases and an extensive discussion of the subject will be found in the very late case of *Butterly* v. *Robbins*, 177 Va. 368, 14 S. E. (2d) 544. As said by the court in that case:

> "'Exclusive jurisdiction' does not in all circumstances mean all jurisdiction."

Applying these decisions to the situation with reference to the Fort Sill Military Reservation, we find that by virtue of the 1913 Act of the State legislature and the 1936 and 1940 Acts of Congress, Oklahoma exercises jurisdiction over the Reservation for service of process, also for taxing purposes, and for the application of the Workmen's Compensation Laws of the State. For these latter purposes the State has full jurisdiction and same is exercised through the Industrial Commission, the Tax Commission and the State courts. Jurisdiction over the Reservation for purposes other than those vested in the State, partly by reservation and partly by Act of Congress, is in the federal government. We do not believe that this situation can justify the contention on the part of the appellee that the reservation is a separate and distinct sovereignty and no part of the State of Oklahoma. In this connection, it is well to bear in mind the fact that, as said in the Lowe case and in the McGlinn case, the federal government is not a foreign government and the situation is not the same as if the State had been attempting to cede territory or jurisdiction to a foreign government. If the Reservation is a part of Oklahoma, then there can be no question that this shipment of liquor cannot claim the protection of interstate commerce as against our importation and transportation statutes. Nor can there be found any Act of Congress relating to military reservations with which our seizure of this liquor will conflict. On the contrary, as we shall hereafter show, the national policy as

to intoxicating liquors within military reservations has for nearly half a century been one of complete prohibition.

We have heretofore quoted the 1913 Act by which Oklahoma ceded jurisdiction to the United States. Similar acts ceding jurisdiction over similar areas have been passed by many states. Some of these acts, phrased like that of Oklahoma, have expressly provided that the ceded jurisdiction should continue only so long as the areas should be used by the United States for the particular purpose for which ceded. Others like the Kansas act have not contained such provision.

The act passed by the Massachusetts legislature which appears as Ch. 1, Sec. 7, General Laws 1932, concludes:

> "and exclusive jurisdiction over any such tract shall revest in the commonwealth if such tract ceases to be used by the United States for such public purpose."

It is interesting to compare these Acts ceding "exclusive jurisdiction" to the United States over tracts acquired and used for particular purposes with the language of acts ceding territory to the United States with the intent that the same shall be severed from the state and become entirely under the sovereignty of the federal government without any contemplation that it shall continue to be a part of or ever again be returned to the state.

There is no question as to the intent of both the federal government and the States concerned in the cession of the territory now constituting the District of Columbia and

such intent is reflected in the language of the Acts of Cession. The Act of the General Assembly of Maryland was passed in November, 1788, and we find the same quoted in the case of *Evans* v. *United States*, 31 App. D. C., at page 549 as follows:

> " • • • 'that the representatives of this state in the house of representatives of the Congress of the United States, appointed to assemble at New York on the 1st Wednesday of March next, be and they are hereby authorized and required on the behalf of this state to cede to the Congress of the United States any district in this State not exceeding 10 miles square, which the Congress may fix upon and accept for the seat of government of the United States.' • • • "

The Act of the Assembly of Virginia was passed on December 3, 1789, and is quoted in *Young* v. *Bank of Alexandria*, 8 U. S. 384, as follows:

> "(Revised Code, p. 52), it is enacted, 'That a tract of country, not exceeding ten miles square, or any lesser quantity, to be located within the limits of this state, and in any part thereof as Congress may by law direct, shall be, and the same is hereby, forever ceded and relinquished to the Congress and government of the United States, in full and absolute right and exclusive jurisdiction, as well of soil as of persons residing or to reside thereon, pursuant to the tenor and effect of the 8th section of the 1st article of the constitution of government of the United States.' • • • "

The lands were thus ceded outright to the United States and ceased to be parts of the states. When it developed that the territory ceded by Virginia would not be needed by the federal government it became necessary that Congress should pass the Act of July 9, 1846, ceding

the same back to Virginia in order that such territory might again become a portion of the state.

In December, 1789, the General Assembly of the State of North Carolina passed an act ceding to the United States the territory out of which the State of Tennessee was subsequently organized. We find this act and the deed of cession executed pursuant thereto quoted in an Act of Congress accepting the same and found in Vol. 1, Stats. of Tenn., 1871, pages 193 to 198. Such deed of cession recites in part:

> "Whereas, the General Assembly of the State of North Carolina, on the ____ day of December, in the year of our Lord one thousand seven hundred and eighty-nine, passed act, entitled 'An act for the purpose of ceding to the United States of America certain western lands therein described,' in the words following, to-wit:
>
> "Whereas, the United States, in Congress, assembled, have repeatedly and earnestly recommended to the respective States in the Union, claiming or owning vacant western territory, to make cessions of part of the same, as a further means, as well of hastening the extinguishment of the debts, as of establishing the harmony of the United States; and the inhabitants of the said western territory being also desirous that such cession should be made in order to obtain a more ample protection than they have heretofore received: Now this State, being ever desirous of doing ample justice to the public creditors, as well as the establishing the harmony of the United States, and complying with the resonable desires of her citizens:
>
> "1. Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by authority of the same, That the Senators of this State, in the Congress of the United States, or one of the

> Senators and any two of the Representatives of this State, in the Congress of the United States, are hereby authorized, empowered, and required to execute a deed or deeds on the part and behalf of this State, conveying to the United States of America, all right, title, and claim which this State has to the sovereignty and territory of the lands situated within the chartered limits of this State, * * * ."

Following with an extended description of the ceded lands and with other sections including a statement of the purpose of the organization of a new state or states. The granting clause of the deed follows the language of the legislative act.

A like intent is manifest from the language of the act of cession passed by the Georgia Assembly ceding territory out of which the State of Mississippi was subsequently organized, which act appears in Hutchinson's Miss. Stats. 1848, at page 55. The same is true with reference to the Act of the Virginia Assembly of December 20, 1783, ceding territory northwest of the Ohio, which act appears in the 1843 statutes of Indiana, page 16.

By these various acts the states ceded territory and not merely jurisdiction which should cease whenever the federal government should no longer use the lands for the specified purposes.

The distinction becomes further apparent when we consider the fact that Oklahoma, as well as the other States of the Union, has provided for the acquisition by the United States by purchase, condemnation or otherwise of sites for custom houses, post offices, arsenals, forts, military

reservations, etc., in accordance with the 17th Clause, eighth Section, Article 1, U. S. Constitution. The Oklahoma Act was passed in 1908 and appears in the Oklahoma Statutes 1941, Title 80, Sections 1 to 3, Section 1 having been slightly amended in 1915. Section 2 cedes exclusive jurisdiction over such acquired lands "for all purposes except the service upon such sites of all civil and criminal process of the courts of this State; but the jurisdiction so ceded shall continue no longer than the United States shall own such lands." Some of the acts of other states contain clauses similar to the closing phrase above quoted. Others do not. The jurisdiction of the United States over properties thus acquired is even more "exclusive" and subject to less reservations than those properties acquired by acts of cession similar to the Oklahoma Act of 1913, *supra*, ceding jurisdiction over the military reservation. Yet when we search the Acts of Congress we find nothing to indicate that such properties have ever been regarded as separate sovereignties or as having ceased to be parts of the States in which they are located. We have found no Act of Congress ever ceding back to any state any such property upon its abandonment or when it appeared that the federal government no longer needed the same. Congress has provided for the sale of such property just as any other proprietor might sell or dispose of the same. We find such provision made in 54 Stat. 764, 765, 40 U.S.C.A., Sec. 304a, authorizing disposition of surplus real property located

outside of the District of Columbia and exclusive of military or naval reservations, acquired by any federal agency.

The Act of July 1, 1939, 4 F. R. 2729, 53 Stats. 1426, 1427, 40 U. S. C. A., Sec. 341, provides for the acquisition of sites and construction of public buildings by the Federal Works Administration. Said section further provides in part:

> "When a building is about to be constructed on a site acquired prior to May 25, 1926, and such site is found by the Federal Works Administrator to be unsuitable for its intended purpose, he is hereby further authorized and empowered to acquire a new site in lieu thereof by purchase, condemnation, exchange, or otherwise, and except in case of exchange to dispose of the present site by public sale and to execute the necessary quit claim deed of conveyance * * * ."

Said act further provides in part (40 U. S. C. A. Sec. 345):

> "In carrying into effect the provisions of sections 341, 342, 343, 344, 346, and 347 of this title if the Federal Works Administrator deems it to be to the best interests of the government to construct federal buildings to take the place of existing federal buildings, he is hereby authorized to cause the present buildings to be demolished, in order that the sites may be utilized in whole or in part for such buildings, or where in his judgment it is more advantageous to construct a federal building on a different site in the same city, to sell any such building or buildings and the site or sites thereof, at such time and on such terms as he deems proper; and to convey the same to the respective purchasers thereof by the usual quit claim deed, and to deposit the proceeds of the sales thereof in the treasury as miscellaneous receipts."

Section 345b authorizes disposition of obsolete buildings and sites. No where is there the slightest indication of any need to cede such sites back to the States and certainly it cannot be said that upon the sale of an abandoned post office site the purchaser possesses a bit of independent territory of which he is the sovereign and which constitutes no portion of the State within which it is located. Yet such would be the logical and necessary result if these federal areas are to be held as constituting no part of the state while the federal government is using and exercising jurisdiction over them. It is significant that while unquestionably many such properties have been sold and disposed of by the federal agencies there is to be found no Act of Congress ceding jurisdiction back to the States. Undoubtly after the conclusion of the present war, as following the end of the World War, many properties now being owned and used for national defense will be abandoned and the properties sold.

If the contention of respondent be sustained and the Fort Sill Military Reservation held to be no part of the State of Oklahoma a condition would be created certainly not contemplated by the States or the federal government and most chaotic and disastrous in its results. Not only Oklahoma, but all the other States would be dotted with innumerable areas varying in size from a small building site to a large military reservation or park, each constituting a separate and distinct sovereignty entirely apart from the State. The State would be utterly powerless to protect

itself against shipments of liquor so long as they were consigned for delivery upon any of said federal sites and areas. This would be true not only with reference to military reservations, parks, defense plants, post office sites, but also as to every tract of unappropriated public land and Indian lands, exclusive jurisdiction over which was expressly reserved in the Enabling Act and recognized as vested in the United States by Article 1, Section 3, of the State Constitution which provides in part:

> "The people inhabiting the State do agree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian, tribe, or nation; and that until the title to any such public land shall have been extinguished by the United States, the same shall be and remain subject to the jurisdiction, disposal, and control of the United States. • • •"

It has never been considered that these lands were not a part of the State and that it was necessary for Congress to pass an act ceding them to the State upon their passing into private ownership or ceasing to be restricted.

This chaotic condition would further affect the marriages which have taken place and are continually occuring in the military reservation and naval bases. In Oklahoma marriage licenses are valid only in the county were issued. They would not be valid in a reservation or a naval base not a part of the county. Moreover chaplains and others authorized to perform marriage ceremonies derive such authority entirely by virtue of State laws and would not be

so authorized to perform such ceremonies in an area not a part of the State and county.

Certainly neither the States nor the national government ever contemplated such an interpretation of the statutes as would result in the almost unthinkable situation produced by the adoption of respondent's contention. The full purpose of both the State and national government is accomplished by holding that the said area continues to constitute a portion of the State in which it is located but that while used by the United States the national government exercises jurisdiction exclusive of any control by the State other than in those respects reserved by the State or ceded to the State by Congress. With reference to Fort Sill Military Reservation the State at the present time exercises jurisdiction for the service of process in matters arising within the State but outside of the reservation and full jurisdiction and authority in applying the Workmen's Compensation Laws and laws relating to income, use and sales taxes and taxation of public utilities and corporations. Neither the State by the 1913 Act nor Congress by the Acts of 1936 and 1940 ceded territory. They ceded jurisdiction only.

That the national government itself has never regarded the taking of jurisdiction by the federal government as affecting a territorial severance of the area from the State and the transfer of same to the United States is further indicated by the Act of October 9, 1940, 40 U. S. C. A. 255, 9 A. F. C. A., Title 40, § 255. This act provides that United

States agencies and authorities may accept exclusive or partial jurisdiction over lands acquired by the United States by filing notice with the governor of the State or taking other similar appropriate action. It is thus left to the government agencies to determine whether the United States shall accept partial, concurrent, or exclusive, jurisdiction or none at all. We know of no instance in which Congress has ever left the matter of the transfer of territory to be thus determined. This Act was considered by this Court in *Adams* v. *U. S.*, ____ U. S. ____, 87 L. ed. Adv. Ops. 1025.

(2) Our position that this military reservation and other federal areas within the State are not severed from it and this shipment of intoxicating liquor not entitled to the protection of interstate commerce, is further supported by the fact that these areas are not and are not intended to become "States." The word "States" has been construed and defined many, many times by this Court and the courts of the various states, including the supreme court of Minnesota in State vs. Storaasli, to which we shall presently refer. The Minnesota court referred to it as "a territorial subdivision having organized civil government." We have found no instance in which a military reservation has ever been held to be a "State." There are two cases holding to the contrary.

Search has revealed only one case directly involving the question as to the applicability of the interstate commerce clause to military reservations or similar federal

areas. This is the case of *Grayburg Oil Company* v. *State*, (Texas Civ. App.), 286 S. W. 489. This case involved the right of the State to tax the sales of gasoline which the plaintiff company sold to United States and shipped from a refinery in Texas to Fort Sam Houston, over which the United States had exclusive jurisdiction. The contention was made that this was an attempt to tax the federal government or an agency or instrumentality thereof, and for that reason beyond the power of the State, and also that it was an intereference with interstate commerce. The court held against both contentions, and with reference to the question of interstate commerce said as follows:

> "We do not think the effect of ceding to the United States legislative administrative jurisdiction over territory held by that government solely for military purposes in carrying out its general powers to provide for the national defense, removes the territory thus ceded from the boundaries of the state in which it is located within the meaning of those legal principles which deny to the states any power or control by taxation or otherwise over interstate commerce. The framers of the Interstate Commerce Act clearly must have had the same view, or there would have been express provision to cover such cases, since there are military reservations in various states scattered throughout the Union. The establishment of forts, arsenals, reservations, etc., for military purposes may or may not be permanent. Clearly the United States government would not have the power to acquire land and have jurisdiction ceded to it for such purposes, and then pervert the grant to wholly and different purposes, without a further consent on the part of the ceding state. When the use for the purposes of the grant has ceased, and the grant for such purposes is abandoned, then clearly the jurisdiction of the state in so far as its sovereignty is con-

cerned reattaches. The right to tax the land owned by the government should still not exist, but its exemption from state taxation would rest upon another principle; that is, upon its federal ownership as an individual proprietor. While conceding the full grant of sovereignty for legislative and administrative purposes to the United States government over the territory thus ceded, we are unable to bring ourselves to the conclusion that the territory becomes wholly foreign to the state in matters of commerce, and that the transaction involved constituted interstate and not intrastate commerce. * * *

"We think the ceding of jurisdiction over the territory did not constitute it territory foreign to the State of Texas, in the sense that commerce conducted between a point in the state and a point within the territory was foreign and interstate commerce; and therefore we hold that the tax was valid as to these sales."

We quote further from this case in the Appendix. (Page iv).

The case was appealed but was affirmed as to both questions by the Commission of Appeals in an opinion reported in 3 S. W. (2d) 427. It was carried to the Supreme Court of the United States and was reversed in a memorandum opinion reported in 73 L. ed. 519 on the authority of the prior opinion in *Panhandle Oil Company* v. *Mississippi*, 277 U. S. 218, 72 L. ed. 857, 56 A. L. R. 583, holding such a tax invalid as to gasoline sold to the United States. This Court did not discuss the question of interstate commerce.

It may be suggested that this case is inapplicable because it involved a shipment from within the State of Texas to the military reservation located in that State. It must

be borne in mind, however, that if the contention of plaintiff be true, that the Fort Sill Military Reservation is an entirely separate and distinct sovereignty to the extent of not being any part of the State of Oklahoma and as constituting a "State" within the interstate commerce laws, it must follow that every transportation of any commodity from Lawton or Oklahoma City or any other point in Oklahoma into the Fort Sill Military Reservation, post office or other federal area is interstate commerce and govened by all of the provisions of the Interstate Commerce Act and the rules and regulations of the Interstate Commerce Commission.

It has been argued that the Texas court recognized the fact that a different situation would have existed if the shipment involved had originated beyond the boundaries of the State. In that event it would have been under the full protection of interstate commerce regardless of the point of destination within the State of Texas, as the shipment involved an entirely legitimate article of commerce and not intoxicating liquor being transported into a dry state. If the shipment involved in the present case had been 225 "packages" of ordinary "merchandise" as indicated by the bill of lading (R. 15), it would have been fully protected by interstate commerce regardless of its destination whether Oklahoma City or Fort Sill. The bill of lading, however, was deceptive, intentionally so, we believe, to protect the transportation of intoxicating liquor.

Part IV of the Interstate Commerce Act relating to freight forwarders, Title 49, c. 13, Sec. 402(a), (1002[a] U. S. Code), subdivision (3) defines "State" as follows:

> "The term 'State' means a 'State' of the United States or the District of Columbia."

The same definition is found in Sec. 902 (k), U. S. Code, relating to water carriers.

In the Motor Carrier Act, 1935, part 2, Sec. 203, Aug. 8, 1935, c. 498, Sec. 1, 49 Stats. 544 (Sec. 303 U. S. Code), "State" is defined in subdivision (8) as follows:

> "The term 'State' means any of the several States and the District of Columbia."

Section 203 (a) (10) provides:

> "The term 'interstate commerce' means commerce between any place in a State and any place in another State or between places in the same State through another State, whether such commerce moves wholly by motor vehicle or partly by motor vehicle and partly by rail, express, or water."

The above definitions will not include a military reservation. If this had been a shipment of arms, ammunition or other such merchandise originating in St. Louis and destined for Oklahoma City or any other point in the State it would have been protected as interstate commerce.

In Section 6 of the Act of October 9, 1940, 54 Stat. at L. 1060, U. S. C. A., Title 4, § 18, to which we have heretofore referred, the term "State" is defined to include "any territory or possession of the United States." Yet it is clear that Congress did not regard a military reservation as either a "State," a "Territory," or a "Posses-

sion" of the United States but as a "federal area," which is defined as meaning "any lands or premises held or occupied by or for the use of the United States, or any department, establishment or agency of the United States."

In *Sancho* v. *Bacardi Corporation of America*, 109 Fed. (2d) 57, the Circuit Court of Appeals for the 1st. Circuit held that Puerto Rico did not come within the interstate commerce clause.

Other questions were involved, and on appeal the United States Supreme Court, in *Bacardi Corporation of America* v. *Domenech, Treasurer*, 311 U. S. 149, 85 L. ed. 98, reversed the Circuit Court of Appeals as to certain features of the case on ground that treaty provisions were violated. The court did not discuss the question of interstate commerce.

We find many other cases which, though not arising under the interstate commerce clause, help to throw an interesting light upon the meaning of the word "state" or "states." In the case of *State* v. *Storaasli*, 180 Minn. 241, 230 N. W. 572, the defendant was a non-resident of the state of Minnesota, a member of the military forces of the United States, and had been stationed at Fort Snelling within the State of Minnesota for more than a year. This reservation had been ceded to the federal government by legislative act similar to our own. Defendant had an automobile registered in the military reservation pursuant to a system of registration established by the commanding officer, he had paid a fee and was provided with license

plates and a form of registration certificate issued to him. He claimed the same privileges with reference to the use of the highways outside of the reservation and within the state as accorded by statute to non-residents living in other states. The Minnesota supreme court held that the military reservation was not a "state" or "country" within the statute allowing such exemption and that defendant was not entitled to operate his car upon the highways of the state without properly registering the same as provided by state law. This case was appealed to the United States Supreme Court and this Court in the case of *Storaasli* v. *State of Minnesota*, 283 U. S. 57, 75 L. ed. 839, affirmed the decision of the state court. In the body of the opinion the Court said:

> "A resident of the state who desires to operate his car for a single day is liable for the entire year's tax. If the state determines to extend a privilege to non-residents, it may with propriety limit the concession to those who have duly registered their vehicles in another state or country.
>
> "The mere fact that appellant has not so registered his car and cannot, therefore, bring himself within the class benefited by the exemption, does not create a discrimination against him. The state was not bound to make a classification with respect to exemptions for him and those similarly situated."

(3) The possession and transportation of this shipment of liquor was in violation of the laws of the State. Two of our statutes relating to possession of intoxicating liquor are in a somewhat uncertain status. Sec. 31, Title 37, O. S. 1941, was enacted in its present form in 1933. It

makes illegal the possession of more than one quart of liquor containing more than 3.2% of alcohol by weight and capable of being used as a beverage in or about a "place of business, or any place of amusement, or recreation, or any public resort, or any club room, whether such liquor be intended for the personal use of the person so having and keeping the same or not," with certain exceptions as to druggists, hospitals, etc., not applicable here. A statute similar except as to alcoholic content and certain excepted institutions had been enacted in 1910. In the early case of *Ex parte Wilson*, 6 Okla. Cr. 451, it was held unconstitutional. The present section as adopted in 1933 was incorporated in the 1941 statutes which were adopted as a code by legislative act, Chapter 4, Title 75, O. S. L. 1943.

Sec. 32, Title 37, O. S. 1941, declares unlawful the keeping of more than one gallon of intoxicating liquor at a place of residence. The statute was originally adopted in 1910. In *Brickey* v. *State*, 55 Okla. Cr. 451, 32 Pac. (2d) 743, the early case of *Ex parte Wilson, supra*, was referred to as having held said act unconstitutional. (Said case did not refer to this section). The Act was also referred to as having been superseded by another act which now appears as Sec. 82, Okla. Stats. 1941. Sec. 82, however, makes the possession of more than one quart *prima facie* evidence of an intent to commit an offense. It is purely a rule of evidence while Section 32 defines a criminal offense. The two sections do not cover the same matter and are not in conflict. In a later case the court again referred to Sec-

tion 32 as superceded by Section 82. Such question was not material to the decision and as above stated, the two sections are not in conflict. Sections 31, *supra*, 32 and 82 are all parts of the present code and present questions for our state court to consider.

Section 1, Title 37, Oklahoma Statutes 1941, provides:

> "It shall be unlawful for any person, individual or corporation to furnish, except as in this chapter provided, any spirituous, vinous, fermented or malt liquors, or any imitation thereof or substitute therefor, or to manufacture, sell, barter, give away or otherwise furnish any liquors or compounds of any kind or description whatsoever whether medicated or not which contain more than three and two-tenths (3.2%) per cent of alcohol, measured by weight, and which is capable of being used as a beverage, except preparations compounded by any licensed pharmacist, the sale of which would not subject him to the payment of the special tax required by the laws of the United States; or to ship, or in any way convey, such liquor from one place within this state to another place therein except the conveyance of a lawful purchase as herein authorized; or to solicit the purchase or sale of any such liquors, either in person or by sign, circular, letter, card, price list, advertisement, or otherwise, or to distribute, publish or display any advertisement, sign or notice where any such liquor may be manufactured, bartered, sold, given away, or otherwise furnished, or to have the possession of any such liquors with the intention of violating any of the provisions of this chapter. A violation of any provisions of this section shall be a misdemeanor, and shall be punished by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00), and by imprisonment for not less than thirty (30) days, nor more than six (6) months; Provided, however, that the provisions

of this chapter shall not apply to the manufacture and sale of unfermented cider and wine made from apples, grapes, berries and other fruit grown in this State, and to the use of wine for sacramental purposes in religious bodies."

This section, also, has been in effect since its adoption in 1910, the 1933 amendment merely changing the alcoholic content. The statement was made in the opinion of the Circuit Court of Appeals that this section would not apply to this shipment because it originated outside of the State. This contention, however, has not been upheld by our State courts.

In *Huff* v. *State*, 9 Okla. Cr. 675, 133 Pac. 265, the liquor was brought by the defendant from Gainesville, Texas, and was being transported by him allegedly for distribution to a club of eight, each of whom had contributed a proportionate amount to pay for the liquor. In paragraphs 1 and 2 of the syllabus the court said:

"1. The Supreme Court of the United States having decided that the acts of Congress are valid which suspend for 21 years after the admission of Oklahoma into the Union the interstate federal laws which otherwise would have permitted persons residing in that portion of the state which formerly comprised Indian Territory to introduce into the state as interstate commerce intoxicating liquors for their own use, and this being a federal question, such decisions of the Supreme Court of the United States are binding upon all of the officers and people of the State of Oklahoma, and it is the plain duty of this Court to follow these decisions.

"2. A person residing in any portion of the State of Oklahoma who may introduce into the state in-

toxicating liquors and distribute the same among persons who may have furnished him money to purchase said liquors thereby violates the law and is liable to prosecution and conviction for illegally conveying such liquors from one point in the state to another point in the state."

We shall not quote from the extensive discussion in the body of the opinion. The court quoted, beginning on page 687, from the case of *Blunk* v. *Waugh*, 32 Okla. 616, 122 Pac. 717, which also was a case of a man to whom liquor was consigned for distribution to a large number who had given orders for the liquor.

Prior to the adoption of the Webb-Kenyon Act, the State was considerably hampered in dealing with shipments of liquor coming from outside the State and therefore some of the earlier cases of our court have to be read with that fact in view.

In *Barnett* v. *State*, 31 Okla. Cr. 413, 239 Pac. 680, it was contended that the statute would not apply to a person transporting liquor for his own use. However, the court overruled this contention in the following language:

"The defendants in their brief claim that this whisky, if whisky it was, may have been intended merely for their own use, and that there was no sufficient proof of an illegal transportation. This contention is untenable, because the law makes no exceptions and any transportation from one place to another, particularly where there is a change in the physical possession of the liquor is illegal."

In *Sleeper* v. *State*, 71 Okla. Cr. 136, 109 Pac. (2d) 520, the defendant was charged with transporting 426 pints

of whisky. It was contended that the evidence did not show that the liquor was being transported, but the court held that the evidence of the officers that they saw the car moving toward the highway was sufficient. In the body of the opinion the court remarked:

> "No defense was made and from the amount of liquor in defendant's possession, no defense could be made."

In *Shirley* v. *State*, 31 Okla. Cr. 174, 237 Pac. 627, and in *Thomas* v. *State*, 27 Okla. Cr. 264, 266 Pac. 600, the court held that the distance the liquor might have been transported was immaterial. In other words, our criminal court of appeals has never held that the place of origin of the transportation was material in the commission of the crime. The Oklahoma statutes simply do not recognize the right of any person to transport liquor within this State.

Section 6, Title 37, Oklahoma Statutes 1941, reads as follows:

> "It shall be unlawful for any person, individual, or corporate, to directly or indirectly, keep or maintain by himself or by associating or combining with others *any club room* or other place in which any liquor, the sale of which is prohibited by the laws of Oklahoma, is received, kept or stored, for the purpose of selling, bartering, giving away, or otherwise furnishing, *or for distribution or division among members of any club or association* by any means whatsoever, and any person who shall sell, barter, give away, or otherwise furnish, distribute or divide any such liquor so received, kept or stored, shall be guilty of a felony and shall be punished by a fine of not less than Fifty ($50.00) Dollars, nor more than Two Thousand ($2,000.00) Dollars, and imprisonment of not less than

Thirty (30) days in jail, nor more than five (5) years in the penitentiary."

With reference to the above section the opinion of the Circuit Court of Appeals (R. 45) states:

"We cannot say upon the facts here presented that the receipt of such shipment by the secretary of the club and the delivery to the officers of their several orders embraced in the shipment would constitute a violation by the club of the foregoing section. It seems to us that under the facts it could not be said that the club received, kept or stored the liquor for sale or for distribution to its members."

The court seems to interpret the statute as applicable only with reference to the club and quotes from our brief the statement:

"The club, of course, appears to have no actual connection with this liquor."

It is true that there is nothing in the record to show that the club, as such, ordered the liquor or owned any interest in the same. But it was undoubtedly being used by the secretary of the club and a number of its members in order to evade the State laws and also the Act of Congress. A more careful reading of the above section readily discloses the fact that it is not necessary for the club itself to be the owner of the liquor or as a club participate in the transaction. On the contrary, the statute seems directly applicable to the very sort of scheme which had been devised and was being followed with this shipment. In *Hawkins* v. *State*, 16 Okla. Cr. 382, 186 Pac. 490, though the facts were not the same and the plan fol-

lowed was more crude, the court applied this statute in sustaining conviction of members of a lodge which maintained a club room in which liquors were sold to members.

Section 38 of said Title 37 provides:

"It shall be unlawful for any person in this state to receive directly or indirectly any liquors, the sale of which are prohibited by the laws of this state, from a common or other carrier.

"It shall also be unlawful for any person in this state to possess any liquor, the sale of which is prohibited by the laws of this state, received directly or indirectly from a common or other carrier in this state. This section shall apply to such liquors intended for personal use, as well as otherwise, and to interstate as well as intrastate shipments or carriage. Any person violating any provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than $50.00 nor more than $500.00 and by imprisonment for not less than thirty days nor more than six months; Provided, however, that scientific institutions, universities and colleges, and bonded apothecaries, druggists, hospitals or pharmacists may receive and possess pure grain alcohol, as provided by the laws of this state, to be used only for such purposes as are prescribed by the laws of this state."

The opinion of the Circuit Court of Appeals (R. 45) treats this section as unconstitutional. It had never been so held by any court and was applied by the State Court in *Walker et al* v. *State*, 18 Okla. Cr. 661, 197 Pac. 520. In sustaining the conviction of two defendants charged with receiving six quarts of whiskey from the Missouri, Kansas & Texas Railway, a common carrier, the consti-

tutionality of the statute was not questioned, but it was treated as valid and we feel that under these circumstances the Federal courts should not readily hold otherwise. In 1939 the State Legislature passed an act which now appears as Sections 41 to 48, Title 37, O. S. 1941. Section 1, Title 37, *supra,* had proven sufficient through the years to enable the State to prosecute persons charged with the transportation of liquors even though it had originated beyond the State's borders, but due to the interpretation placed upon the 1936 Federal statute relating to the transportation of liquor into the states, which interpretation was adopted by the Circuit Court of Appeals in the case of *Dunn* v. *U. S.*, 98 Fed. (2d) 119, 117 A. L. R. 1302, we were obliged to adopt the 1939 Act in order to secure the application of said 1936 Federal statute to liquor importation into Oklahoma and thus obtain the cooperation and assistance of federal officers. The opinion of the Circuit Court of Appeals (R. 46) treats this act as regulatory and as setting up a permit system for the importation of liquor, and states:

> "Since there is no way to obtain a permit to import intoxicating liquor into the reservation, one who imports liquor into the reservation should not be held criminally responsible for not securing a permit, which he could not obtain."

The same argument would be applicable if this truck load of liquor were coming to Oklahoma City and would entirely destroy the effectiveness of the act. The act and convictions resulting from its enactment have been sus-

tained by such Circuit Court of Appeals, also by the Circuit Court of Appeals for the Eighth Circuit and by our State Court.

Hinkle v. *U. S.*, 115 Fed. (2d) 217; *Eppo* v. *U. S.*, 112 Fed. (2d) 931; *Hayes* v. *U. S.*, 112 Fed. (2d) 417; *Flippin* v. *U. S.*, 121 Fed. (2d) 742, certiorari denied, 62 S. Ct. 184, 314 U. S. 677, 86 L. ed. 542; *Harris* v. *State*, 74 Okla. Cr. 13, 122 Pac. (2d) 401.

No person could secure a permit to transport that liquor or any portion of it into the State of Oklahoma. The 1939 Act is unusually worded, the same being made necessary by the Federal interpretation which had been given the 1936 Act of Congress. But the act is not regulatory. It is prohibitory even beyond previously existing laws.

The first section of said act, being Section 41, *supra*, provides:

> "It shall be unlawful for any person, individual or corporate, to import, bring, transport or cause to be brought or transported into the State of Oklahoma, any intoxicating liquor, as defined by the laws of this state, containing more than four (4%) per cent of alcohol by volume, without a permit first secured therefor as hereinafter provided."

Section 42 provides for the issuance of permits for the importation and transportation of alcohol for scientific or mechanical purposes by and to scientific institutions, universities and colleges authorized to receive same, free of tax under the laws of the United States; also, alcohol

for medicinal use by hospitals and sanitoriums, and under certain prescribed conditions by druggists and manufacturing agencies for specified purposes; also, for wine for sacramental purposes by religious bodies. The section then provides:

> "No permit shall be issued to any person, or for any purpose, or for the importation of any intoxicating liquor, except as specifically authorized under this section."

Further sections contain detailed provisions with reference to the authorized permits. Violation of the act constitutes a crime punishable by a fine of not less than fifty dollars ($50.00) nor more than two thousand dollars ($2,000.00) and imprisonment of not less than thirty (30) days in jail nor more than five (5) years in the penitentiary.

Prior to the adoption of the 1939 Act our statutes authorized the importation of alcohol and wine for the above purposes, but we did not have the permit system and, in view of such fact, we were denied the assistance of the Federal Government in protecting the State against the importation of liquor and were forced to adopt this act by which we prohibited importation without permit and then prohibited the issuance of a permit for other than the few exceptions. The act did not alter at all the fact that Oklahoma is by Constitution and statute a prohibitory State and merely increased the effectiveness of such prohibition by adoption of the 1939 Act. But to hold that a person may not be convicted for importing liquor

because of his inability to obtain a permit authorizing such importation would completely vitiate all of our prohibitory laws.

We feel that this shipment was being transported clearly in violation of the statutes of this State and, therefore, subject to seizure and confiscation by the State officers unless said shipment be held to be in course of transportation to a destination entirely beyond the State's borders and protected as interstate commerce.

(4) Said shipment and the possession, transportation, delivery and distribution thereof were in violation of the laws of the United States relating to Fort Sill Military Reservation.

As we have heretofore stated, the policy of the United States, with reference to intoxicating liquors in military reservations has been one of absolute prohibition.

Section 1350, Title 10, U. S. C. A., 31 Stat. at L. 758, first enacted in 1899 and re-enacted with a slight amendment by the Act of February 2, 1901, has been, and is, the only congressional act relating to intoxicating liquors in such reservation. Said section provides:

> "The sale of or dealing in beer, wine or any intoxicating liquors by any person in any post exchange or canteen or army transport or upon any premises used for military purposes by the United States, is prohibited. The Secretary of War is hereby directed to carry the provisions of this section into full force and effect."

The plan which was followed in the ordering of this liquor, which was seized and is involved in this case,

was a cleverly devised scheme intended to avoid the terms and prohibitions of the above Federal statute.

On the basis of such plan the statement was made in respondent's brief in the Circuit Court of Appeals that the sale of the liquor took place in East St. Louis and the Circuit Court of Appeals so construed the transaction (R. 46). The section covers more than a "sale" as narrowly and technically construed, and we have no doubt that it would have been promptly applied by the authorities in charge if the participants in this transaction had been privates or non-commissioned officers. Nor has it ever been shown that the adoption of this scheme by the commissioned officers was ever authorized or approved by the national government or by those in authority and charged with the enforcement of this section. It is evident that the contrary has been true.

Even though it might be contended that said section, when technically construed, would not apply to such shipment, there can be no question at all that the shipment was violative of the statutes of Oklahoma, as construed by the State courts, and these statutes had the force and effect of Federal statutes within said military reservation by virtue of the provisions of the Assimilative Crimes Statute. Such statute has been in force for many years, has been repeatedly re-enacted and was last so re-enacted by the Act of June 6, 1940, 54 Stat. at L. 234, 18 U. S. C. A., § 468, and reads as follows:

"Whoever, within the territorial limits of any state, organized territory, or district, but within or upon any of the places now existing or hereafter reserved or acquired, described in section 272 of the Criminal Code (S. L. S., title 18, sec. 451), shall do or omit the doing of any act or thing which is not made penal by any laws of Congress, but which, if committed or omitted within the jurisdiction of the state, territory or district in which such place is situated, by the laws thereof in force on February 1, 1940, and remaining in force at the time of the doing or omitting the doing of such act or thing, would be penal, shall be deemed guilty of a like offense and be subject to a like punishment."

The above section is carried as Section 857 of the 1940 Supplement to the Military Laws of the United States. Our statutes relating to the possession and transportation of intoxicating liquor were all in force prior to February 1, 1940, and as they are not only not in conflict with any Federal statute, but are in full and complete harmony with the only Federal statute relating to intoxicating liquor in military reservations, it follows that such criminal statutes of the State were made applicable as Federal statutes within the reservation.

In *Sharon* v. *Hill*, 24 Fed. 726, the Circuit Court of Appeals held that an act not specifically made an offense by the statutes of the United States, but which is an offense under the laws of the State wherein performed, is made by the assimilation statute an offense under the laws of the United States and punishable by the same penalties which are inflicted under the laws of the State. In *Franklin* v. *United States*, 216 U. S. 559, 54 L. ed. 615, the Court

held that such assimilation statute is not limited to fixing punishment for offenses expressly created by the Federal laws, but applies to and makes punishable any act committed in such places not so provided for, but which is an offense under the laws of the State.

Another case construing said section is that of *United States* v. *Press Publishing Company*, 219 U. S. 1, 55 L. ed. 65.

This section will apply as to State laws in effect at the time the act is re-enacted. *Steele* v. *Halligan*, 229 Fed. 1011.

In *United States* v. *Andem*, 158 Fed. 996, this statute was applied with reference to a crime denounced by the State law and committed in a post office building owned and occupied by the United States within a state which had ceded jurisdiction over such place to the United States.

In *United States* v. *Dolan*, Federal Cases No. 14978, it was applied in the prosecution of an assault with intent to kill, committed in a navy yard.

We think we may further be justified in suggesting that no one could very well contend that the Federal Assimilative Crimes Statute would include a "state" as the word is used in the interstate commerce clause. Yet, the statute is undoubtedly applicable with reference to the military reservation.

If the statute be sufficient for the adoption and enforcement within the reservation of the Oklahoma statutes

to which we have referred, then the transportation and delivery of this shipment to the officers' club or its secretary or the individual officers in the Reservation would be in direct violation of said section as so applied. If the reservation be a state within the interstate commerce clause, it will also be a state within the contemplation of the Twenty-first Amendment, and the transportation of liquor into it would be a violation of said amendment. In the matter of the transportation of liquor into states, not only the Twenty-first Amendment is to be considered, but also the provisions of the Webb-Kenyon Act, which was originally adopted on March 1, 1913, re-enacted on August 7, 1935, appears as Section 122, Title 27, U. S. C. A., 49 Stat. 877.

This act has been construed and applied many times including the case of *James Clark Distilling Company* v. *Western Maryland Railway Company et al.*, 242 U. S. 311, 61 L. ed. 326. In the concluding portion of its discussion of this act the Court said, in part:

> "The movement of liquor in interstate commerce and the receipt and possession and the right to sell prohibited by the state law having been in express terms divested by the Webb-Kenyon Act of their interstate commerce character, it follows that if that act was within the power of Congress to adopt, there is no possible reason for holding that to enforce the prohibitions of the state law would conflict with the commerce clause of the Constitution * * *."

The Twenty-first Amendment and the Webb-Kenyon Act were both discussed and applied in *General Sales and*

Liquor Company v. *Becker et al.*, 14 Fed. Sup. 348; also in *Dugan et al.* v. *Bridges, Governor, et al.*, 16 Fed. Sup. 694.

In connection with the situation thus created, it is interesting to read the concurring opinion of Mr. Justice Jackson in *Duckworth* v. *State of Arkansas*, 314 U. S. 380, 86 L. ed. 265, 138 A. L. R. 1144, and also the case of *O. F. Haley* v. *State*, 34 Okla. 300, 125 Pac. 736.

The case upon which respondent has especially relied is that of *Collins* v. *Yosemite Park & Curry Co.*, 304 U. S. 518, 82 L. ed. 1502. It was cited in the opinion of the Circuit Court of Appeals and the concurring opinion by Judge Bratton. We do not believe that this case, when properly construed, is applicable. In its Act of Cession the State of California had reserved the right to tax, but not the right to regulate within the park. The State was seeking to apply within the park statutes levying an excise tax upon liquors "sold within the State," and also statutory provisions requiring licenses and fixing the various fees to be paid therefor. The Circuit Court of Appeals held against the State on both issues. This Court agreed with the Circuit Court as to the inability of the State to regulate transactions within the park by requiring the securing of a permit or license, but reversed the lower court as to the State's right to tax. In holding that the Twenty-first Amendment would not result in giving the State jurisdiction to legislate for the park area and re-

quire the taking out of a license for the importation of liquor into the park, the Court used the language:

> "There was no transportation into California 'for delivery or use therein.' The delivery and use is in the park and under a distinct sovereignty."

This language has been used in support of the contention that the park did not constitute any portion of the State of California, and that the same would be true as to the military reservation in Oklahoma. We believe this contention to be based upon a misinterpretation and misconstruction of the language of the court. The court had already held that the California statute levying a tax upon sales "in this State" would include "all territory within the geographical limits of the State," and that the statute, therefore, applied within the park. The court further used the expression "exclusive jurisdiction." Yet, we believe that the court did not by this mean "all jurisdiction" to the extent of an entire severance of the territory from California, for the court had already recognized the fact that the United States had received only a "qualified jurisdiction."

It thus appears that while the term "exclusive jurisdiction" was used in the act of cession and also in the opinion by the court, same was used in the sense to which we have heretofore referred, to-wit: as exclusive of all jurisdiction except that reserved by or receded to the State. The court recognized the fact that California had not given up all jurisdiction over the park, but had reserved the

right to tax and take such steps as might be necessary to enforce payment of same. It would seem that in holding the Twenty-first Amendment would not apply because "there was no transportation into California 'for delivery or use therein,' the court was using such language in the sense of "transportation into California 'for delivery or use therein—in violation of the laws thereof,'" which is the language of the Twenty-first Amendment. The regulatory features of the State law being held inapplicable as to the park, the importation of the liquor into said park without a license, would not constitute importation for delivery or use in violation of the laws of California even though the park "be in this State," as the court had held. The same rule could have been applied as to a dealer in the City of San Francisco if for some reason the regulatory features of the State law were not applicable within said city. It is important that we bear in mind the fact that California is not a prohibitory State and that the importation of intoxicating liquor into the State is not forbidden. The case did not involve the enforcement of criminal statutes, but of a regulatory statute not applicable to a dealer within the park. In the present case the State officers were acting in the enforcement of criminal statutes prohibiting the importation, possession and transportation of intoxicating liquors into and within this State. The State officers were not attempting to exercise any jurisdiction over the reservation.

The case of *Kiker* v. *City of Philadelphia*, 346 Penn. 624, 31 Atl. (2d) 289, involved the right of the City of Philadelphia to tax the income received by a non-resident of the State from services performed in the Federal area of League Island, exclusive jurisdiction over which had been ceded to the Federal Government. The case arose after the Act of 1940 ceding to the states the right to levy income taxes within Federal areas, and the court held that an ordinance levying a tax "in Philadelphia" was applicable in the League Island Reservation as within the territorial boundaries of the city.

In *Rainier Nat. Park Co.* v. *Martin*, 18 Fed. Supp. 481, the Washington statute imposing taxes on persons "in this State" and "within this State" were held applicable to a West Virginia corporation doing business in Mt. Rainier National Park. The case was affirmed in a memorandum opinion by this Court, reported in 302 U. S. 661, 82 L. ed. 511,

(5) Said shipment and transportation thereof were in violation of the laws and public policy of the United States and appellee could not claim the protection of interstate commerce or the assistance of the courts of the United States in the recovery of said liquor.

We believe that we have sufficiently discussed the applicable statutes to establish our contention that this possession and transportation were in violation not only of the laws of Oklahoma, but of the laws and public policies of the United States. We readily agree that if the Na-

tional Congress, acting pursuant to the powers vested in it with reference to the regulation of the affairs of Federal areas, had provided for the purchase and transportation of liquors by the United States, or its agencies and instrumentalities, for use, sale, distribution or consumption in military reservations, an entirely different situation would be presented. But no such statutes, and no provision or authorization for the importation or sale or distribution of intoxicating liquors by private citizens, officers' clubs, private soldiers, officers commissioned or non-commissioned, or governmental agencies exists. The only change in policy that has occurred has been due to the fact that after Congress, by the 1933 Act, had declared 3.2% beverages to be non-intoxicating, the Judge Advocate General ruled that the sale of beer at post exchanges was no longer prohibited.

This shipment of liquor, being in violation of the laws of Oklahoma and also of the laws relating to the Fort Sill Military Reservation, the appellee is not entitled to come into this Court and secure relief. They are not entitled to say "give us back this liquor in order that we may transport it and deliver and distribute it in violation of the laws of the State and of the Nation whose protection we claim."

This lack of right of redress, because of the illegal character of the transaction, was suggested in Justice Jackson's concurring opinion in the *Duckworth Case*, 314

U. S. 390, 86 L. ed. 261. In *O. F. Haley Company* v. *State*, 34 Okla. 300, 125 Pac. 736, the Court said in the syllabus:

"Where a firm ships whisky from another state into that part of this state formerly Indian Territory, and it is seized by the state authorities, and such firm interpleads and asks a return to it of such whisky, on the ground that it is an interstate shipment, and has not lost its interstate character by delivery to the consignee, held that, because the allegations of the interplea show a violation of the criminal laws of the United States, the doors of the courts are closed to such firm."

In the body of the opinion it was said:

"It follows, then, that the allegations of the interplea in this case, upon which the plaintiff in error demands the interference of the court, by ordering a return and delivery to it of the liquors seized by the state, when viewed in the light of the decision in the Webb case, *supra*, clearly show that the interpleader has violated a law of the United States in shipping the liquors as it did. Those allegations, presented in a proper way to a federal grand jury, would justify an indictment, and later a conviction, carrying with it a possible sentence of five years in the penitentiary. Therefore, it resolves itself into the single question: Will the Court lend its aid to one who asserts a right growing out of his own violation of the law? We answer 'No.' The principle of public policy is expressed in the maxim, *Ex dolo malo non critur actio*, and in discussing this maxim, Lord Mansfield says:

"'No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. If, from the plaintiff's own statement or otherwise, the cause of action appears to arise *ex turpa causa*, or the transgression of a positive law of this country, where the court says he has no right to be assisted.' (Wharton's Legal Maxims, p. 81.)

"This rule is sustained by this Court in the case of *Blunk* v. *Waugh et. al.*, 32 Okla. 616, 122 Pac. 717, wherein it is said:

"'It is well established, we might say universally established, that the courts will not enforce any rights which directly arise out of an illegal contract. *Holden* v. *Lynn*, 30 Okla. 663, 120 Pac. 246; *Citizens' National Bank of Chickasha* v. *Mitchell*, 24 Okla. 488, 103 Pac. 720 (20 Ann. Cas. 371); *Wagner* v. *Minnie Harvester Co.*, 25 Okla. 558, 106 Pac. 969; *Binswanger* v. *Stanford*, 28 Okla. 429, 114 Pac. 621, in which the earlier Oklahoma cases are cited; *Bowman* v. *Phillips*, 41 Kan. 364, 21 Pac. 230, 3 L. R. A. 631, 13 Am. St. Rep. 292; *Tatum* v. *Kelley*, 25 Ark. 209, 94 Am. Dec. 717; *Graves* v. *Johnson*, 156 Mass. 211, 30 N. E. 818, 15 L. R. A. 834, 32 Am. St. Rep. 446; *Banchor* v. *Mansel*, 47 Me. 58; *Hanauer* v. *Doane*, 12 Wall. 342, 20 L. ed. 439; *Fisher* v. *Lord*, 63 N. H. 514 (3 Atl. 927).'

"If the courts will not open their doors to enforce an illegal or fraudulent contract, they certainly will not enforce a demand inseparably connected with a violation of the criminal laws."

CONCLUSION

In conclusion, may we again state our position that the Military Reservation, as well as the post offices and similar properties of the United States, continue to be parts of the State of Oklahoma, and that neither the post office, the defense plants, Will Rogers Field, the various camps, Platt National Park, nor military reservations are within the interstate commerce clause. We are convinced of the correctness of our contention that with the coming of Statehood the reservations became a part of the State with full jurisdiction vested in the State except as re-

stricted by the use of the Federal Government for the purposes for which the property was owned by the United States as a proprietor; and that after the adoption of the 1913 Act, the reservation continued to be a part of the State with jurisdiction in the State for the purposes of service of process and for taxation, with full authority in the State to legislate with reference to such taxation and enforce said laws. Except for this jurisdiction reserved in the State, the United States was vested with full jurisdiction, exclusive of all other than the said reserved jurisdiction in the State. Since the passage of the 1936 Congressional act with reference to such properties as the military reservation, post offices, etc., the State has possessed the jurisdiction reserved by the 1913 Act and also jurisdiction over the reservation in the application of the Workmen's Compensation Laws, the State having full authority to legislate further upon said subject and apply and enforce such laws. By virtue of this surrender of jurisdiction by the United States, the Oklahoma State Industrial Commission has been and is exercising jurisdiction over said reservation. The State's jurisdiction was further extended by the Act of October 9, 1940, *supra*. Except in these respects, the United States exercises full jurisdiction over the reservation. As a result, we have a condition of concurrent or dual jurisdiction, with the cession to the United States by the 1913 Act operating, as said by the Supreme Court in the Ottinger Bros. case, as a "suspension" of that full jurisdiction which had been

theretofore vested in the State. This did not operate, however, to sever the reservation, together with the many post offices and other properties, from the State and establish each one of them as a separate little state or territory. If the contention of appellee be sustained, it must include and apply to not only military reservations and Platt National Pank, but to every post office in the State of Oklahoma, and each one of them will constitute a separate little dominion and every transportation of property from Oklahoma City into the post office or from any town in the State into the post office located in that town will constitute interstate commerce. To us this would constitute an unthinkable situation, with no support in the Constitution, the Acts of Congress, or the decisions of any court. We submit that said shipment was in violation of the laws of the State of Oklahoma, the laws applicable to the Fort Sill Military Reservation, and the Webb-Kenyon Act regardless of any question of the applicability of the Twenty-first Amendment; that said shipment of liquor constitutes contraband with no right of property therein, and that the appellee and the liquor company cannot come into this Court and secure the return of this illegal shipment in order that it may be delivered, distributed and possessed in direct violation of the aforesaid laws.

Our position upon these various questions is well and ably stated in the dissenting opinion of Judge Murrah, which begins on page 49 of the record. We shall not at-

tempt to quote the same, but request that the entire dissenting opinion be studied.

And finally may we allude to the dissenting opinions written in connection with the recent decision of the Supreme Court of the United States in *Pacific Coast Daily* v. *Department of Agriculture et al.*, — U. S. —, 87 L. ed. Advance Opinions 560.

The opinion of the Court is not in itself in conflict with our position, but the dissenting opinions contain language which we consider most appropriate to the situation presented by the issues arising in this case.

Respectfully submitted,

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SAM H. LATTIMORE,
Assistant Attorney General,
Attorneys for Appellants.

GEORGE MISKOVSKY,
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Oklahoma County,
Of Counsel.

December, 1943.

APPENDIX

Section 2, Chapter 16, Oklahoma Session Laws 1939:

"Permits may be issued, as in this act provided, for such importation and transportation of alcohol for scientific or mechanical purposes by and to such scientific institutions, universities and colleges as are authorized to secure the same free of tax under the laws of the United States, and alcohol by and to hospitals and sanitariums for medicinal use in such hospitals and sanitariums, and for the importation and transportation of alcohol to and by any apothecary, druggist, pharmacist or manufacturing agency, who shall need same for such purpose and, who shall have executed a bond to the State of Oklahoma, approved by the Tax Commission of the State of Oklahoma, in the sum of not less than one thousand ($1,000.00) dollars, conditioned that none of said alcohol shall be used or disposed of for any purpose other than in the compounding of prescriptions or other medicines, or in such manufacturing business, the sale of which prescriptions, medicines or manufactured products would not subject him or it to the payment of the special tax required of liquor dealers by the United States. Permits may also be issued for the importation and transportation, or causing to be imported or transported into this state, of wine for sacramental purposes. No permit shall be issued to any person, or for any purpose, or for the importation of any intoxicating liquor, except as specifically authorized under this section."

James v. *Dravo Const. Co.*, 58 Sup. Ct. 208, 302 U. S. 134, 82 L. ed. 155.

In the body of the opinion the Court said, in part:

"If lands are otherwise acquired, and jurisdiction is ceded by the state to the United States, the terms of the cession, to the extent that they may lawfully be prescribed that is, consistently with the carrying out of the purpose of the acquisition, determine the extent of the federal jurisdiction • • •.

"But it is urged that if the paragraph be construed as seeking to qualify the consent of the state, it must be treated as inoperative. That is, that the state cannot qualify its consent, which must be taken as carrying with it exclusive jurisdiction by virtue of clause 17. The point was suggested by Justice Story in *United States* v. *Cornel*, Fed. Cas. No. 14867, 2 Mason 60, 65, 66, but the construction placed upon the consent in that case made decision of the point unnecessary. There the place (Fort Adams in Newport Harbor) had been purchased with the consent of the state, to which was added a reservation for the service of civil and criminal process. Justice Story held that such a reservation was not incompatible with a cession of exclusive jurisdiction to the United States, as the reservation operated 'only as a condition' and 'as an agreement of the new sovereign to permit its free exercise as *quoad hoc* in his own process.' Reservations of that sort were found to be frequent in grants made by the states to the United States in order to avoid the granted places being made a sanctuary for fugitives from justice.

"Story on the Constitution, volume 2, § 1225, Reference is made to statements in the general discussion in the opinion in *Fort Leavenworth R. R. Co.* v. *Lowe*, *supra*, but these are not decisive of the present ques-

tion. The decision in that case was that the state retained its jurisdiction to tax the property of a railroad company within the Fort Leavenworth Military Reservation, as federal jurisdiction had not been reserved when Kansas was admitted as a state and when the state subsequently ceded jurisdiction to the United States, there was saved to the state the right 'to tax railroad, bridge, and other corporation, their franchises and property on said reservation.' The terms of the cession in this respect governed the extent of the federal jurisdiction. See *Surplus Trading Company* v. *Cook, supra.* There are *obiter dicta* in other cases, but the point now raised does not appear to have been definitely determined.

"It is not questioned that the state may refuse its consent and retain jurisdiction consistent with the governmental purposes for which the property was acquired. The right of eminent domain inheres in the federal government by virtue of its sovereignty, and thus it may, regardless of the wishes either of the owners or of the states, acquire the lands which it needs within their borders. *Kohl* v. *United States,* 91 U. S. 367, 371, 372, 23 L. ed. 449. In that event, as in cases of acquisition by purchase without consent of the state, jurisdiction is dependent upon cession by the state, and the state may qualify its cession by reservations not inconsistent with the governmental uses. Story on the Constitution, volume 2, § 1227; *Kohl* v. *United States, supra,* 91 U. S. 367, at page 374, 23 L. ed. 449; *Fort Leavenworth R. R. Co.* v. *Lowe, supra; Surplus Trading Company* v. *Cook, supra.; United States* v. *Unzeuta, supra.* The result to the federal government is the same whether consent is refused and cession is qualified by a reservation of concurrent jurisdiction, or consent to the acquisition is granted with

a like qualification. As the Solicitor General has pointed out, a transfer of legislative jurisdiction carries with it not only benefits, but obligations, and it may be highly desirable, in the interest both of the national government and of the state, that the latter should not be entirely ousted of its jurisdiction. The possible importance of reserving to the state jurisdiction for local purposes which involves no interference with the performance of governmental functions is becoming more and more clear as the activities of the government expand and large areas within the states are acquired. There appears to be no reason why the United States should be compelled to accept exclusive jurisdiction or the state be compelled to grant it in giving its consent to purchases."

See, also:

Palmer v. *Barrett*, 162 U. S. 399, 40 L. ed. 1015.

Grayburg Oil Co. v. State (Tex.), 286 S. W. 489:

"There have been quite a number of adjudications with reference to the powers of the state in territory, jurisdiction over which has been ceded to the government in like cases. It has been uniformly held that legislative authority therein is absolute in the United States government and is wholly wanting in the state government. Consequently acts done within the territory are not punishable by state laws, and the police power of the state does not extend to any portion of the territory. The regulation of business, such as license taxes, where the business is conducted upon the ceded territory, are matters of federal and not state control. In the early case of *Mitchell* v. *Tibbetts* (Mass. 1835), 17 Pick. 298, it was held that a prosecu-

tion would not lie for the violation of a statute which made certain requirements of vessels transporting stone and gravel within the commonwealth, where the vessel was engaged in transporting stone from a point in Maine to the navy yard at Charlestown. The Court construed the act to apply to landing stone, etc., at some place or taking them some place within the commonwealth, and held that a mere transporting through waters belonging to the commonwealth was not covered by the statute. The statute was held not to apply to the case in question on the ground that the stone was not landed at a place within the State of Massachusetts.

"It is quite evident that the statute there under consideration was a police regulation, and independently of whether the transportation might be regarded as inter or intrastate commerce, when it is considered that under the interpretation given the statute its violation consisted solely in the landing of stone, and this landing was within the military reservation, the application of the statute in that case would have required a holding that the police power of the state extended to the ceded territory. It is clear that the decision reached was the only proper decision that could have been made. If the case had depended upon whether the transaction was inter or intrastate commerce, then clearly the jurisdiction of the state would not have attached, because the shipment was from a point outside the State of Massachusetts. If the shipment had been from a point in Massachusetts, a different question would have been presented, and the case might properly have been decided wholly apart from the question of interstate commerce. In such case, even if the transaction be held to be interstate commerce, it would have been

competent for the state to regulate the loading at a point within its borders, provided the effect of the statute was not unduly to burden interstate commerce.

"There have been a number of cases upon the question of the power of a state to tax personal property situated upon military and Indian reservations within the state boundaries. With the exception of the case of *Concessions Co.* v. *Morris*, 109 Wash. 46, 186 Pac. 655, the uniform holding appears to be that such property, if not otherwise exempt, would be taxable. This case reviews the authorities upon the subject and distinguishes the other cases from the case there presented. The holding was that the property was not taxable where its situs was fixed by its physical location. The Court says in concluding:

"'It is to be borne in mind that we are not here concerned with the question of whether the personal property owned by the appellant might or might not be assessed and taxed against it as its place or residence within the state.'

"There are some expressions in the opinion which would lead to the conclusion that the Court was of the view that the ceded territory ceased to be a part of the state and became a territory of the United States. These expressions, however, are not essential to the decision reached. If we concede the correctness of that holding, still it is not controlling in the case at bar. The right to tax personal property by virtue of its situs as fixed by its physical location might very well be held to be a proper legislative function, and where legislative jurisdiction has been ceded to the federal government it may be held to follow as a logical conclusion that the state's power of taxation within the district is wholly nullified, and

this without a further holding that the district ceased to be within the territorial limits of the state for all purposes and absolutely. The case of *Ft. Leavenworth R.* v. *Lowe*, 114 U. S. 525, 5 S. Ct. 996, 29 L. ed. 264, is probably a leading one upon this subject. The opinion is by Mr. Justice Fields, who enters into a lengthy dissertation upon the history and purpose of the constitutional provision in question and the necessities which require complete legislative and administrative jurisdiction in the federal government. It is there pointed out, as in other cases, that the mere reservation by the state of concurrent jurisdiction to serve criminal and civil process does not in any way affect the absolute jurisdiction of the United States in matters of legislation, which includes, of course, the matter of taxation; but that this reservation is merely for the purpose of preventing the ceded jurisdiction from rendering the territory a harbor or place of refuge for those seeking to evade the processes of the state and its courts in the administration of criminal and civil laws. We attach no particular importance to the fact that this reservation is made in the grant.

"The power of the United States government to own land is not an absolute one, but extends only to the necessary and incidental powers which it posseses as a sovereign government. It is essential in the administration of that government and the performing of its functions throughout the territorial limits of the United States that it have supreme legislative and administrative jurisdiction over such portions of the states as may be necessary in the performance of such functions. The power of the government in this regard is not only that of an individual proprietor or owner of land, but also that of a sovereign state to exercise governmental functions therein. In other

words, sovereignty. But we apprehend that there is a marked difference between sovereignty acquired for such purpose and acquisition or ownership of territory where the permanent seat of government is to rest, or where the territory is to be administered generally by the United States government, as where foreign territory has been acquired by treaty or conquest, or where it holds the territory during a pre-territory stage, pending its eventual admission into the Union as a sovereign state. In the latter instance it is clear that the territory constitutes no part of the state for any purpose, and commerce within its limitations is wholly foreign to the state, and commerce between it and the state is not commerce within the state.

"We are supported in this view by the first section of the Interstate Commerce Act, which was originally passed in 1887 (24 Stat. 379). This act was very carefully drawn by able statesmen, and the language used in defining the cases to which the act should apply was precise, studied, and guarded. The act was undoubtedly intended to cover every case where commerce by common carriers by rail passed beyond the boundaries of the individual state, and was intended not to apply to commerce wholly within a state. The language of the statute is that its provision shall apply to any common carrier or carriers engaged in the transportation of passengers or property, etc., 'for a continuous carriage or shipment, from one state or territory of the United States, or the District of Columbia, to any other state or territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other

place in the United States, and also to the transportation in like manner of property shipped from any place in the United States, to a foreign country and carried from such a place to a port of trans-shipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or in an adjacent foreign country.'

"We think the word 'territory,' as used in this act, is to be given its generally accepted meaning. If it had been intended by the framers of the act to apply it to all territory over which the United States has legislative jurisdiction, different language would have been used, and the specific designation of the District of Columbia would in that case have been wholly superfluous. We think the word was meant to designate those portions of the territorial possessions of the United States which were organized and exercised governmental functions under the Act of Congress, and were political units subject exclusively to the federal government, such as the territories which have from time to time been granted statehood.

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 447

WALTER B. JOHNSON, T. R. HUSTED, B. A. WEST, CHARLES RIGGS, GEORGE GOFF, MIKE MCGREW, LEWIS KOLB, J. M. GENTRY AND IVAN KENNEDY,

Petitioners,

vs.

YELLOW CAB TRANSIT COMPANY, a Corporation,

Respondent.

REPLY BRIEF OF PETITIONERS

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January, 1944.

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In order to state perhaps more clearly our position and to correct some statements made in the brief of respondent and in oral argument by counsel, we desire to present a short reply brief.

On page 4 of respondent's brief it is stated that if the shipment of liquor had been delivered it would have been received by the secretary of the club for the various officers "and distributed to them." The quoted words are not supported by any proof or included in the stipulation of facts. On the contrary, we expressly and positively refused to so stipulate. In oral argument before the Court, counsel endeavored to support this statement in their brief by reading to the Court the concluding language of the supplemental stipulation as same appears at the bottom of page 17 and top of page 18 of the record. The quoted language, however, is not found therein. Such a provision was contained in the stipulation as prepared by counsel for respondent, but, as appears from the original on file in the office of the clerk of the district court, was crossed out. We refused to agree to something not supported by any proof and contrary to that which we had every reason to believe, to-wit: that if any officers who had signed orders had cancelled the same or been transferred to some other post the liquor would be sold and delivered to such other officers as might desire the same. In further effort to support the claim that the purchase of the liquor was concluded in the State of Illinois and thus evade, if possible, the provisions of the federal statute (10 U. S. C. A., § 1350, 31 Stat. 758, quoted in our original brief), counsel state on page 28 of their brief that the sale of the liquor was consummated in the State of Illinois "as the petitioners have admitted." At no time

have petitioners ever made such an admission and the statement finds no support in the question from our Circuit Court of Appeals' brief contained in the note at the bottom of said page 28. Said quotation was taken from page 26 of our brief in the Circuit Court, where we state:

> "In the district court plaintiff advanced the proposition that the officers' club was a government instrumentality. However, the contention was wholly untenable, not supported by any authority and in direct conflict with two opinions of the Judge Advocate General, and we anticipate that no such argument will be made here. Moreover, the officers' club was not concerned with this shipment, which was neither ordered nor purchased by nor to be the property of the club."

During the oral argument counsel for respondent was asked where payment was made, whether the liquor was send c.o.d. or payment made in Illinois. The reply was to the effect that payment was made in Illinois. We do not believe that counsel intentionally mis-stated the facts, but had he paused for a moment's reflection he would have remembered that the liquor had not been paid for: that, as set forth in the stipulation, the order was given by the secretary over the telephone and shipment made thereon. Also, that at the time the supplemental stipulation was made checks deposited with the secretary by some of the officers had already been returned to them. This latter statement is outside of the record, but counsel's statement to the Court was also outside of the record and contrary to the facts of the situation, as well known

to counsel on both sides. We think we may reasonably conclude that the shipment was not made c.o.d. because of the provisions of 18 U. S. C. A., § 389 (Criminal Code, § 238), making it unlawful for the carrier of liquor "from one state, territory or district of the United States, or place non-contiguous to but subject to the jurisdiction thereof, into any other state, territory or district of the United States, or place non-contiguous to but subject to the jurisdiction thereof," which prohibits the delivery or sale therein of such liquor, "* * * to collect the purchase price or any part thereof or in any manner act as the agent of the buyer or seller except for the actual transportation and delivery." The liquor house in St. Louis had no dealings with the officers at Fort Sill, received no order from them, did not know them, and did not ship or consign the liquor to them. It seems apparent that the shipment was made and consigned to the club with the intent that the club or its secretary should dispose of the liquor and collect and transmit the money to the shipper. To such transaction said Section 1350, *supra*, and also Section 6, Title 37, O. S. 1941, seem to us clearly applicable.

With further reference to Sections 31 and 32, Title 37, O. S. 1941, discussed on pages 35 and 36 of our brief, we call attention to the fact that the difficulty originated with the old case of *Ex parte Wilson*, 6 Okla. Cr. 451. That case was decided in 1911, which was prior to the Webb-Kenyon Act and also prior to some very pertinent de-

cisions of this Court, including that of *James Clark Distilling Co.* v. *Western Maryland Railway Co. et al.*, 242 U. S. 311, 61 L. ed. 326, cited on page 50 of our brief. In Ex parte Wilson, our Court held said Section 31 to be contrary to the Constitution of the United States. Unquestionably the court would not have so held if it had had before it the opinion of this Court in the James Clark Distilling Company case, *supra*. The West Virginia statute and said section of the Oklahoma Code are almost identical, the principal difference being that possession of more than a quart would be necessary to constitute the offense under the Oklahoma statute while no minimum was stated in the statute of West Virginia. These later decisions of this and other courts have never been considered by the Oklahoma court, and we think we may well expect a different result when the question again is presented to our own court. Furthermore, no such difficulty exists with reference to other sections of our statutes which we have discussed in our brief.

With further reference to the inquiry of Mr. Justice Black concerning the application of our laws to shipments of liquor being transported entirely across the state to a destination in some other state, we have found no case in which an attempt has been made to interfere with such shipment. Personally the writer feels that a shipment of liquor in transit to a destination in a state in violation of the laws of that state and consequently of the Twenty-

first Amendment and the 1936 Act of Congress should be denied the protection of interstate commerce, not only upon crossing the line into the state of destination, but also during the entire course of its transportation. It would not seem that it should be true that the federal government would say to those transporting such a shipment "we will protect you in your possession and transportation of the liquor through all intermediary states until you reach the border of the state of destination. Then we will prosecute you and confiscate the liquor because of your violation of the Twenty-first Amendment and the Act of Congress, and will also permit such prosecution and confiscation by the officers and courts of the state of destination." Should it not rather be true that the protection of interstate commerce should entirely be withdrawn from such illegal shipment? This, however, is simply expressed as the writer's personal opinion and is not being briefed as we do not consider the question vital to our case.

In the difficult task of enforcing its prohibitory laws the State of Oklahoma has, since the adoption of the Webb-Kenyon Act and with the exception of the period during which such assistance was withdrawn due to the interpretation placed by the Treasury Department and the Circuit Court of Appeals upon the 1936 Act of Congress and prior to the adoption of the 1939 Act of our Legislature, enjoyed the co-operation of the federal government. We feel that we are entitled to a continuance of such co-opera-

tion, and that the fact that scattered over the entire state are innumerable areas such as postoffices, defense plants, military areas, parks, Indian lands and tracts of unappropriated public land, should not result in constituting each such area a thorn thrust deep into the side of Oklahoma. Our problem would be made immeasurably more complicated if the federal government is to give its protection to shipments of liquor because they may be consigned for delivery upon some tract of unappropriated public land, a lot set aside for a postoffice site, a defense plant, a park or other of the almost innumerable areas in Oklahoma over which the federal government has jurisdiction. During the oral argument we were asked as to the number of federal areas in the state. We have no way of knowing, but the number is very large. From the recent report of the Byrd Committee it appears that the federal government owns approximately one-fifth of the entire area of the United States, including more than forty per cent of the states of California and Oregon. The complicated situation thus created can only be satisfactorily solved through co-operation. The over-riding authority of the federal government should not be exercised in such a way as to seriously hamper, if not destroy, the efforts of the state to enforce its laws.

Respectfully submitted,

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GEORGE MISKOVSKY,
County Attorney,
Oklahoma County,
Of Counsel.

January, 1944.

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(OCTOBER TERM, 1943)

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Petitioners,

VERSUS

YELLOW CAB TRANSIT COMPANY,
a Corporation,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

YELLOW CAB TRANSIT COMPANY,
Respondent,

By JOHN B. DUDLEY,
DUKE DUVALL,
Oklahoma City, Oklahoma,
Counsel for Respondent.

ovember, 1943.

UTTERBACK TYPESETTING CO., OKLAHOMA CITY, OKLA.

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Petitioners,

VERSUS

YELLOW CAB TRANSIT COMPANY,
a Corporation,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

STATEMENT

Stripped to its essence, the question involved in this case is whether a shipment of liquor by a common carrier from one state destined for delivery within a United States Military Reservation or other Federal enclave located inside the geographical boundaries of another state, is a shipment "through" the latter state or an "importation into" such state.

The other points referred to in the petition and supporting brief are simply side issues subordinate or auxiliary to this primary question.

It is our position herein that this Court has squarely and definitely settled this point as held by both the trial and Circuit Courts and there is no occasion for *certiorari*.

Respondent is a common carrier of commodities generally operating in interstate commerce under the Interstate Commerce Act and the rules and regulations of the Interstate Commerce Commission. In accordance with its tariff on file, it accepted, under a uniform bill of lading, a shipment of liquor originating at East St. Louis, Illinois, upon which the freight was prepaid, destined for delivery in Fort Sill Military Reservation located within the boundaries of Oklahoma. On the truck transporting the liquor were also various other commodities destined to various points and various consignees.

Certain of the petitioners, state officers, took it upon themselves to raid such truck and seize the interstate liquor shipment which was stipulated to be still in transit.

It is the contention of the petitioners that they had the right to seize this liquor under the State laws because it amounted to an importation into the State in violation of the State statutes to the same extent as if it had been destined for delivery into any city, town or other point within the State, and that the fact that its ultimate delivery point was a United States Military Reservation was wholly immaterial. The courts below held to the contrary.

In the last two pages of petitioners' brief (pages 21 and 22) as an apparent afterthought it is asserted that respondent was not a proper party and had no right to maintain this action. This is indeed an afterthought never

asserted below, and we will devote no attention to the point herein except to say that a common carrier, as bailee, certainly has the right to protect shipments in its possession and which it is lawfully hauling, from unlawful seizure and interference.

ARGUMENT

Neither these State officers nor the State can have any justiciable interest in what Federal laws may obtain in Fort Sill Military Reservation or other enclaves of the United States, nor whether they be enforced or not by the Federal authorities. This must be true regardless of the source of such Federal laws, whether through specific congressional act, the Assimilative Crimes Statute, or military fiat. The only question the State can possibly be rightfully interested in is whether or not it has jurisdiction to enforce its own liquor laws over the Reservation and other Federal enclaves.

The State has no legislative jurisdiction over Fort Sill Military Reservation.

The trial court found (R. 35):

> "That Fort Sill Military Reservation is under the exclusive jurisdiction and dominion of the Federal Government, and the State of Oklahoma has no jurisdiction over it, except in very limited respects where Congress has ceded jurisdiction to the State and which

are of no effect upon or pertinent to the issues in this case."[1]

The Circuit Court approved.

The correctness of the foregoing quoted holding of the courts below is no longer open to question. In 1913, the Oklahoma Legislature enacted a statute[2] expressly ceding exclusive jurisdiction over Fort Sill Military Reservation, reserving only the right to tax railroads and other corporations and their fanchises and property within the Reservation and the right to serve civil or criminal process therein in suits or prosecutions on account of rights acquired, obligations incurred or crimes committed within the State but outside the Reservation.

This Federal area, which was acquired long prior to statehood, has been and still is used exclusively for military purposes. This Court and the Supreme Court of Oklahoma in many cases, a few of which are cited in the foot-

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1. Examples of the exceptions referred to by the trial court where Congress had expressly ceded jurisdiction to the State, are the act extending the provisions of Workmens Compensation Laws over Federal enclaves, Act of June 25, 1936, 49 Stat. 1938, 40 USCA 290; and the Buck Act extending State income, sales and use tax acts to Federal areas, Act of October 9, 1940, 54 Stat. 1059, 4 USCA 13-18.

2. 8 O. S. 1941, Sec. 4.

note[3] have squarely determined under such circumstances as these that the State has no legislative or other jurisdiction over such Federal area except in the limited respects mentioned. The aforesaid Statute of Cession is quoted and applied to Ft. Sill in the first Oklahoma decision cited.

The statement in the petition (page 7) and in the brief (page 15) that the district court found that Fort Sill was never a part of the State of Oklahoma and not within the boundaries of Oklahoma Territory, is inaccurate. Counsel was simply referring to a discussion in the opinion. The Court only made one finding and that was that the facts were as contained in the written stipulation of the parties on file in the case and the admissions in the pleadings (R. 35). Nor was there any conclusion of law to that effect, the only conclusion in this respect being the one above quoted (R. 35-36).

The shipment was a movement in interstate commerce through and not an importation into the State of Oklahoma.

The district court concluded (R. 36) that since the shipment originated in Illinois, consigned for delivery by common carrier into the Reservation, the property of the Fed-

3. Collins v. Yosemite Park & Curry Company, 304 U. S. 518, 82 L. ed. 1502; Murray v. Gerrick & Company, 291 U. S. 315, 78 L. ed. 821; Standard Oil Company of California v. California, 291 U. S. 242, 78 L. ed. 775; Utley v. State Industrial Commission, 176 Okla. 255, 55 Pac. (2d) 762; In re Annexation of Reno Quartermaster Depot—Military Reservation to Independent School District No. 34, Canadian County, 180 Okla. 274, 69 Pac. (2d) 659.

eral sovereign, it was a movement through the State of Oklahoma in interstate commerce, and not an importation into the State so as to be subject to the State's liquor laws.[4] The Circuit Court of Appeals affirmed this holding.

This is the real gravamen of the case, and as we said at the outset, it does not satisfy the necessarily stringent requisite to establishing a ground for *certiorari* by this Court because it is a Federal question and one which has been definitely settled by recent decisions of this tribunal.

The case of *Collins* v. *Yosemite Park & Curry Company*, 304 U. S. 518, 82 L. ed. 502, has conclusively foreclosed this identical point against petitioners. About the only difference between that case and this one is that the Federal enclave there involved was a National Park instead of a Military Reservation. California has a code of liquor laws more liberal than those of Oklahoma, to be sure, but nevertheless regulating the importation of liquor into the State, as do the Oklahoma Statutes. Its statutes, as do those of Oklahoma, make it a crime to import liquor into the state in violation of the stautory provisions. The

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4. "(4) That said shipment, being destined for delivery in Fort Sill Military Reservation, was a shipment *through* the State of Oklahoma, and was not transported *into* the State for delivery or use therein.
"(5) That said shipment was lawfully moving in interstate commerce at the time of its seizure, and not in violation of the laws of the State of Oklahoma or of the United States, and the defendants unlawfully seized the same and are unlawfully retaining possession thereof."

Yosemite Park has exactly the same status in relation to California as the Federal Military Reservation does to Oklahoma. Indeed, California adopted a statute ceding exclusive jurisdiction to the Federal sovereign, very similar to the aforesaid Oklahoma Statute of 1913.

The district court in the Yosemite case held that exclusive jurisdiction over the park was in the United States and that California laws had no force over shipments moving from outside of the State destined for delivery within the park. An injunction was granted against state officers from interfering with such shipments, just as the trial court did in the case at bar.[5]

Notwithstanding the syllogistic argument of petitioners the word "interstate" means between two states, and the Reservation, the point of destination, not being a state, there is no interstate commerce—it can hardly be gainsaid that under present day statutes and decisions this concept is too narrow. This shipment had crossed several state lines in coming from East St. Louis, Illinois. It, and respondent as the common carrier transporting it, were within the scope of Part II of the Interstate Commerce Act.[6]

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5. A pertinent excerpt from the Yosemite opinion is: "As territorial jurisdiction over the Park was in the United States, the State could not legislate for the area merely on account of the Twenty-first Amendment. There was no transportation *into* California 'for delivery or use therein.' The delivery and use is in the Park, and under a distinct sovereignty" (Italics ours).

6. 49 USCA Chap. 8, Sec. 301, *et seq.*, and the rules and regulations of the Interstate Commerce Commission.

It is a cardinal principle in applying the Commerce Clause of the United States Constitution that the phrase "interstate commerce" is to be construed as "not a technical legal conception" but a practical one drawn from the course of business.[7]

Transportation across state lines alone is sufficient to make it one in interstate commerce, and this be true even though the destination of the shipment is in the same state as the point of origin.[8]

Even if such shipment did not move in interstate commerce, the exclusive control thereof by the United States is amply supported in a clause other than the Commerce Clause of the Constitution, namely, Art. IV, Sec. 3, giving Congress plenary power over its possessions.[9]

As illustrating the lack of the importance and merit of the question raised by petitioners as a ground for *certiorari*.

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7. Minnesota v. Blasuis, 290 U. S. 1, 78 L. ed. 131, 134; Inter-Island Steam Navigation Company v. Territory of Hawaii, 98 Fed. (2d) 412, affirmed 305 U. S. 306, 83 L. ed. 189, holding the Territory a State within the meaning of the clause; Stoutenburgh v. Hennick, 129 U. S. 141, 32 L. ed. 637, holding commerce between States and the District of Columbia interstate commerce; 11 American Jurisprudence, Sec. 4, page 8.

8. National Labor Relations Board v. Fainblatt, 306 U. S. 601, 83 L. ed. 1014; Missouri Pacific Railroad Company v. Stroud, 267 U. S. 404, 69 L. ed. 683; 49 USCA. Chap. 8, Sec. 303, Subdivision 10, defining the term.

9. Sancho v. Barcardi Corporation (9th Cir.) 109 Fed. (2d) 57.

we point out that if carried to its logical conclusion, the position of petitioners would mean that the State could effectively control activity within the Fort Sill Military Reservation and other enclaves of the United States. It must be true that if a state has no right to control the activities of the personnel of a Military Reservation or other matters therein, then it certainly cannot do indirectly that which it has no power to do directly, and it cannot by an embargo, prohibit the transportation of liquor, cigarettes or other things into a Military Reservation when it has no right to regulate the use thereof within the confines of such governmental property.

In a very recent holding (March 1, 1943), this Court in *Pacific Coast Dairy, Inc.* v. *Department of Agriculture*, 318 U. S. 285, 87 L. ed. 560, expressly condemned any effort upon the part of the state to indirectly control activities within a Federal area (there the Military Reservation of Moffett Field) by adopting legislation affecting persons within the state doing acts preparatory to performing some service or making some sale within the enclave. California had passed an amendatory statute to its milk control act in order to regulate and control the supply and furnishing of milk within Federal enclaves which the original act was held not to cover. This Court struck down the statute as being beyond the jurisdiction and power of the state.

The petitioners expend considerable space on the various state liquor laws, contending that the Assimilative Crimes Act put such statutes in force in a Military Reservation. As a matter of fact, no state law was violated by

this shipment, but we shall not lengthen this brief by pointing this out in detail, as we do not deem it important to the merits of the petition for *certiorari*. Furthermore, though not expressly mentioned therein, the *Collins* v. *Yosemite Park & Curry Company case, supra*, inferentially settled this question.[10]

Then, too, the policy of the National Government not being one of liquor prohibition, it could hardly be logically contended that its soldiers and Federal Military Areas in which they are stationed should be subjected therein to the laws of a state with a contrary policy.

More important, though, is the fact that it is no concern of the State or its police officers what laws are in effect within a Military Reservation or other Federal area. Such laws are Federal laws[11] and can only be enforced by authorities of that sovereign. The State and its officers have no justiciable interest in the source of such Federal laws nor in the enforcement thereof.

It is urged in the petition and supporting brief that perhaps marriages performed in Fort Sill Military Reserva-

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10. Crater Lake National Park Company v. Oregon Liquor Control Commission, 26 F. S. 363.

11. This is true even though they were adopted from the State by the Assimilative Crimes Act or otherwise and regardless of their source. People of Puerto Rico v. Shell Company, 302 U. S. 253, 82 L. ed. 235; United States v. Press Publishing Company, 219 U. S. 1, 8; Franklin v. United States, 216 U. S. 559, 568.

tion might be invalidated under the holding of the lower court. There is nothing in the record to show that any marriages were ever performed there, and this is the first time that such a suggestion has been made in this litigation. Be that as it may, it is fundamental that: "When the Federal Government acquires a tract of land within a state, local law, not inconsistent with Federal policy, remains in force, until altered by national legislation." *Pacific Coast Dairy, Inc.* v. *Department of Agriculture*, 318 U. S. 285, 87 L. ed. 560.

Furthermore, there are various civil laws of states that have no force in Federal areas. For example, until Congress expressly extended the operation of such laws in Federal enclaves, Workmens Compensation Acts did not apply.[12]

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12. 40 USCA 290; Murray v. Gerrick & Company, 291 U. S. 315, 78 L. ed. 821; Utley v. State Industrial Commission, 176 Okla. 255, 55 Pac. (2d) 762.

CONCLUSION

We respectfully submit that the decision below is correct; that no question of general importance is presented, and that the petition for writ of *certiorari* should be denied.

YELLOW CAB TRANSIT COMPANY,
Respondent,

By JOHN B. DUDLEY,
DUKE DUVALL,
Oklahoma City, Oklahoma,
Counsel for Respondent.

November, 1943.

JAN 5 1944
CHARLES ELMORE CROPLEY
CLERK

No. 447

Supreme Court of the United States

(OCTOBER TERM, 1943)

WALTER B. JOHNSON, T. R. HUSTED, B. A. WEST ET AL.,
Petitioners,

VERSUS

YELLOW CAB TRANSIT COMPANY,
Respondent.

BRIEF OF RESPONDENT

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January, 1944.

UTTERBACK TYPESETTING CO., OKLAHOMA CITY, OKLA.

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WALTER B. JOHNSON, T. R. HUSTED, B. A. WEST ET AL.,
Petitioners,

VERSUS

YELLOW CAB TRANSIT COMPANY,
Respondent.

BRIEF OF RESPONDENT

OPINIONS BELOW

One opinion was delivered by the District Court, written by Honorable Edgar S. Vaught, District Judge, filed December 24, 1942 (R. 18), and reported in Fed. Supp. 594.

The opinion of the Tenth Circuit Court of Appeals was written by Senior Circuit Judge Phillips, dated July 26, 1943 (R. 40), and reported in 137 Fed. (2d) 274.

STATEMENT[1]

The ultimate question here involved is whether a shipment of liquor from outside a state for delivery within a United States Military Reservation or other Federal enclave within such state's geographical boundaries constitutes an importation "into" that state, subjecting it to the state's liquor regulatory laws, or is a shipment "through" the state and not subject to such laws.

Ancillary questions are: (a) whether the so-called Assimilative Crimes Act[2] makes state liquor or other regulatory and licensing statutes effective in Federal enclaves as Federal statutes by adoption, all such statutes providing a penalty for their violation; (b) if so, whether there has been a violation of such statutory measures; (c) and, constituting an inchoate Federal offense, whether the unlawful acts of the petitioners, state enforcement officers, would be immune from injunctive relief.

The facts are not in dispute, being embodied in the admissions in the pleadings (R. 3, 10), in a stipulation (R. 11), and a supplemental stipulation (R. 17). Respondent, a

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1. In making this brief, independent statement, we are not unmindful of Paragraph 4, Rule 27 of this Court but do so of necessity, as petitioners have not yet served their brief and are out of time.

2. Act of June 6, 1940, c. 241, 54 Stat. 234:
"Whoever, within the territorial limits of any State, organized Territory, or district, but within or upon any of the places now existing, or hereafter reserved or acquired, described in section 451 of this title, shall do or omit the doing of any act or thing which is not made penal by any laws of Congress, but which if committed or omitted within the jurisdiction of the State, Territory, or district in which such place is situated, by the laws thereof in force on February 1, 1940, and remaining in force at the time of the doing or omitting of doing of such act or thing, would be penal, shall be deemed guilty of a like offense and be subject to a like punishment".

common carrier for hire by motor vehicle of general commodities, operating under authority of the Interstate Commerce Commission, accepted at East St. Louis, Illinois, a shipment of 225 cases of liquor, consigned to the F. A. S. Officers Club Mess, Fort Sill Military Reservation[3], which lies within the boundaries of the state of Oklahoma. While this shipment was in transit, it was seized by petitioners for the purpose of confiscation and destruction[4].

This suit was instituted, seeking a mandatory injunc- against petitioners, requiring them to hold the shipment in *status quo* pending a determination of the action, requiring them to return the shipment to respondent and refrain from interfering with the movement of such shipment in interstate commerce to its destination.

The F. A. S. Officers Club comprises a membership of several thousand Army Officers on active duty at the Reservation, and provides an officers mess as well as living quarters for a number of officers and furnishes various club recreation facilities such as lounges, reading rooms and the like, and renders various club services.

Prior to the date of the shipment, several hundred members of the club gave to the club secretary their individual written orders for varying quantities of intoxicating liquor, which orders were totaled and telephoned in to the shipper liquor company at East St. Louis, Illinois, which accepted the order and in fulfillment delivered the instant

3. Referred to herein as Reservation.

4. Destruction of confiscated liquor is mandatory under the state law, and no other disposition can be made of it. Laws 1913, Chapter 26, Page 45, Section 1; 37 O. S. A. 90.

shipment to respondent for delivery at the club within the Reservation. Had the shipment been so delivered, it would have been received by the secretary of the club for the various officers, and distributed to them.

In granting the relief prayed for, the trial court held that the Reservation is under the exclusive jurisdiction of the Federal Government, and the State has no power to legislate over it except in certain limited respects not material in this case[5]; that the shipment was moving in interstate commerce *through* the State of Oklahoma and was not an importation into the State; and such shipment was not in violation of any Federal or State laws, and the seizure being unlawful, the liquor should be returned to respondent for delivery free from interference. The Circuit Court affirmed.

ARGUMENT

Not having the benefit of petitioners' brief, we shall pattern the points of our argument after the "questions presented" set forth in the petition for *certiorari* (Page 8), assuming that all of such questions will be argued but no others.

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5. e.g. Act. of June 25, 1936, 49 Stats. 1938, 40 USCA 290, making State Workmen's Compensation Laws applicable in Federal enclaves; the Buck Act, October 9, 1940, 54 Stats. 1059, 4 USCA 14-18, extending state income, sales and use tax acts to Federal areas.

Point I.

Fort Sill Military Reservation is under the exclusive dominion of the United States, and the State of Oklahoma has no legislative jurisdiction over it except in limited respects immaterial to the questions here involved. The Twenty-first Amendment to the United States Constitution does not affect such jurisdiction.

It was stipulated that the Reservation was acquired by the United States from France long before Oklahoma became a state, and is now and always has been used since prior to statehood, exclusively for military purposes and for the performance of the functions of the War Department (R. 13). In 1913, the Oklahoma Legislature enacted a statute ceding exclusive jurisdiction over the Reservation to the United States, undertaking to reserve only the right to serve its civil and criminal processes therein and the right to tax railroad and other corporations on their franchises and property in the Reservation[6].

The Supreme Court of Oklahoma has construed this statute in harmony with our position—disclaiming state

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6. Laws 1913, Chapter 52, Page 90; 80 O. S. A. 4, which reads: "Exclusive jurisdiction be, and the same is hereby ceded to the United States over all the territory now owned by the United States and comprised within the limits of the Military Reservation of Fort Sill, in Comanche County, and Fort Reno, in Canadian County, as declared from time to time by the President of the United States, and over such lands as may hereafter be acquired for the enlargement of said reservations; [illegible]ided, however, that the State of Oklahoma reserves the righ[illegible]ve civil or criminal process within said reservations in suits or p[illegible]ecutions for or on account of rights acquired, obligations incurred, or crimes committed in said state but outside of such cessions and reservations; provided, further, that the State of Oklahoma reserves the right to tax railroad companies and other corporations and their franchises and property on said reservations; and provided, further, that the jurisdiction herein ceded shall continue no longer than the United States shall own and hold said reservations for military purposes".

jurisdiction over the Reservation. *Utley* v. *State Industrial Commission*, 176 Okla. 255, 55 Pac. (2d) 762; *In re Annexation of Reno Quartermaster Depot Military Reservation to Independent School District No. 34, Canadian County*, 180 Okla. 274, 69 Pac. (2d) 659.

Under the holdings of this Court, there can likewise be no question about the correctness of the above stated proposition that Federal jurisdiction is exclusive.

—*Louisville & Nashville Railroad Co.* v. *Cook Brewing Company*, 223 U. S. 70, 56 L. Ed. 355;

Clairmont v. *United States*, 225 U. S. 551, 56 L. Ed. 1201;

Arlington Hotel Company v. *Fant*, 278 U. S. 439, 73 L. Ed. 441;

United States v. *Unzeuta*, 281 U. S. 138, 74 L. Ed. 761;

Surplus Trading Company v. *Cook*, 281 U. S. 647, 74 L. Ed. 1091;

Standard Oil Company of California v. *California*, 291 U. S. 242, 78 L. Ed. 775;

Murray v. *Gerrick & Company*, 291 U. S. 315, 78 L. Ed. 821;

Collins v. *Yosemite Park Company*, 304 U. S. 518, 82 L. Ed. 1502;

St. Louis-San Francisco Railway Company v. *Satterfield* (CCA Oklahoma) 27 Fed. (2d) 586.

In the Yosemite Park Company case the Federal area bore practically the same relation, from a jurisdictional standpoint, to the state of California as the Reservation bears to the state of Oklahoma here, under a statute closely similar to the Oklahoma statute ceding jurisdiction to the United States.

This Court, after noticing the California statute of cession, held with particular reference to the power of the state to control, regulate or legislate over liquor traffic and use within Federal areas, as follows:

> "The jurisdiction over the Yosemite National Park is exclusively in the United States except as reserved to California, e. g., right to tax, by the Act of April 15, 1919. *As there is no reservation of the right to control the sale or use of alcoholic beverages, such regulatory provisions as are found in the Act under consideration are unenforceable in the Park.*
>
> "* * * The State of California has in the area of the Yosemite National Park only the jurisdiction saved under the cession and acceptance acts of 1919 and 1920, it does not have power to regulate the liquor traffic in the Park. *Except as to this reserved jurisdiction, California 'put that area beyond the field of operation of her laws'* " (Italics ours).

Point II.

The shipment, originating in Illinois, consigned for delivery by common carrier into Fort Sill Military Reservation, was a movement "through" the State of Oklahoma in Interstate Commerce, and not an importation "into" the state so as to be subject to the state's liquor laws, notwithstanding the Twenty-first Amendment to the United States Constitution.

While it is true that the Twenty-first Amendment to the United States Constitution increased the power of the state with respect to the importation of intoxicating liquor to the extent that it may entirely prohibit importations into the state or adopt any lesser degree of regulation[7], may even make reasonable requirements for a permit for the transportation of intoxicating liquor in interstate commerce through the state to prevent diversion into illegal channels in the state[8]; the territorial powers and jurisdiction of the state were not increased by the Amendment; and, exclusive territorial jurisdiction over the Reservation being in the United States, no power was given to the state by the Twenty-first Amendment to prohibit or regulate the importation and use of intoxicating liquor in the Reservation. *Collins* v. *Yosemite Park Company*, 304 U. S. 518, 58 S. Ct. 1009, 82 L. Ed. 1502.

Petitioners urge that the shipment in controversy was not a movement in interstate commerce "through" the state of Oklahoma, so as to be invulnerable to the state's liquor

7. Mahoney v. Joseph Triner Corporation, 304 U. S. 401, 58 S. Ct. 952, 82 L. Ed. 1424; State Board of Equalization v. Young's Market Company, 299 U. S. 59, 57 S. Ct. 77, 81 L. Ed. 38.

8. Duckworth v. State of Arkansas, 314 U. S. 390, 62 S. Ct. 311, 86 L. Ed. 294, 138 A. L. R. 1144.

laws, upon the theory that although the point of origin, Illinois, is a state, the destination, Fort Sill Military Reservation, is not one. In other words, that in order for a shipment to be "inter-state" to come within the protection of the Commerce Clause of the Constitution and the exclusive and plenary power of Congress over it, both the origin and destination of the shipment must fall within a strict and literal definition of the word. To state the contention reveals its vice.

Shipment Was Moving In Interstate Commerce.

In the first place, a cardinal principle in applying the Commerce Clause of the United States Constitution is that the phrase "interstate commerce" is to be construed as "not a technical legal conception but a practical one drawn from the course of business." *Minnesota* v. *Blasuis*, 290 U. S. 1, 78 L. Ed. 131, 134; 11 American Jurisprudence, Section 4, Page 8, Note 9, citing many decisions of this Court.

In moving from the point of origin to destination, it was necessary that the shipment cross several state lines. This was sufficient to make the movement one in interstate commerce within the purview of the Commerce Clause[9], and, indeed, if both origin and destination lie wholly within the boundaries of a single state, but the movement necessitates crossing a state line, it is a movement in interstate commerce[10]. Then, too, the instant shipment was being

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9. National Labor Relations Board v. Fainblatt, 306 U. S. 601, 83 L. Ed. 1014.

10. Missouri, Pacific Railroad Company vs. Stroud, 267 U. S. 404, 69 L. Ed. 683.

transported by respondent under its authority from the Interstate Commerce Commission, pursuant to Part II of the Interstate Commerce Act, 49 USCA, Chapter 8, Section 301, *et seq.*, which includes the present shipment within its definition of interstate commerce.

It has been held that commerce between states and territories is interstate commerce[11], as commerce between states and the District of Columbia[12].

However, the exclusive jurisdiction of the United States over the instant shipment and the lack of it in the state is not dependent upon the Commerce Clause of the United States Constitution. The provision of Article IV, Section 3, Clause 2 of the Constitution, that "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States", is amply sufficient to foreclose any jurisdiction in the state[13].

So, the same result is reached whether the Commerce Clause of the Constitution is applied or Article IV, Section 3, giving Congress plenary power over its possessions. In either event, commerce with territories and possessions of the United States, on the one hand, and state or foreign na-

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11. Hanley v. Kansas City Southern Railway Company, 187 U. S. 617, 47 L. Ed. 333; Inter-Island Steam Navigation Company v. Territory of Hawaii 96 Fed. (2d) 412, affirmed 305, U. S. 306, 83 L. Ed. 189.

12. Stoutenburgh v. Hennick, 129 U. S. 141, 32 L. Ed. 637; Galloway v. Bell, 11 Fed. (2d) 558.

13. Sancho v. Barcardi Corporation (9th Cir.) 109 Fed. (2d) 57, wherein it is said:
"The right of Congress to regulate the commerce of Puerto Rico is founded on the constitutional power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States, and the power is in no direct sense dependent upon the commerce clause".

tions, on the other, is intercourse exclusively within the control of Congress.

This Court in the case of *Collins* v. *Yosemite Park Company, supra,* if not directly, certainly by implication upheld the exclusive power of Congress over commerce with a National Park, in holding that the California Liquor Control Act could not affect such commerce and in enjoining interference by state officials with the transportation of liquor through California into the Park.

There is no real difference, so far as the power of the state of Oklahoma is concerned over this shipment at the time of the seizure, than if it had been destined for delivery in Fort Sam Houston in the State of Texas.

This, Being An Interstate Shipment Moving "Through" and Not "Into" Oklahoma, Was Not Subject to Seizure Under State Law.

It is a legal commonplace that a state cannot control or interfere with liquor shipments moving in interstate commerce through the state, by virtue of the exclusive control of Congress over interstate movements under the Commerce Clause of the United States Constitution. The Twenty-first Amendment to the United States Constitution made no change in this respect, nor did the Webb-Kenyon Act, 27 USCA, Chapter 6, Section 122 (re-enacted after the adoption of said Amendment), nor the Legislation Enforcement Act of 1936, 27 USCA, Chapter 9, Section 221, *et seq.*

The Twenty-first Amendment and implementing legislation by Congress merely operated to free liquor im-

portations into a state from the protection and limitations of the Commerce Clause against legislation by the state[14].

This Shipment Did Not Constitute An Importation "Into" Oklahoma.

The very issue involved here, that a shipment of liquor moving into a Federal Reservation lying within the confines of a state was a shipment "through" the state in interstate commerce and was one over which the state had no control, was squarely presented in the recent case of *Collins* v. *Yosemite Park Company*, 304 U. S. 518, 82 L. Ed. 1502, referred to under our first proposition in support of the lack of a state's jurisdiction over a Military Reservation. The Court on the question now under consideration, held in unmistakable language in favor of the appellee's position.

The facts in this case were that the United States owned lands comprising the Yosemite National Park. Part of the land had been acquired by cession from Mexico under the Treaty of Guadalupe Hidalgo in 1848, and part acquired by cession from the state of California. In the National Park there was a concession granted to the appellee by the Federal Government for the operation of hotels, camps and stores under a contract with the Secretary of the Interior.

14. United States v. Gudger 249 U. S. 373, 63 L. Ed. 653; United States v. Hill, 248 U. S. 420, 63 L. Ed. 337; Louisville & Nashville R. Co. v. F. W. Cook Brewing Co., 233 U. S. 70, 56 L. Ed. 355; Hayes v. United States (10th Cir.) 112 Fed. (2d) 417; Premier-Pabst Sales Company v. State Board of Equalization (3-Judge Court, D. C., Cal.), 13 F. S. 90; Williams v. Commonwealth (Va.), 192 S. E. 795; Barnett v. State (Ala., 1942), 9 So. (2d) 267; McCanless v. Graham (Tenn.), 146 S. W. (2d) 137; 30 American Jurisprudence "Intoxicating Liquors", Sections 232, 239, et seq.; 15 C. J. S. "Commerce", Section 99, Page 452, Note 27.

The state authorities asserted that the California Alcoholic Beverage Control Act applied to the appellee concessionaire, and had threatened to seize alcoholic "beverages on or being transported to appellee's premises", and threatened to "institute civil and criminal proceedings against appellee for violation of the Act * * *". Appellee brought this suit to restrain enforcement of the Alcoholic Beverage Control Act within Yosemite Park, on the theory that the park is within the exclusive jurisdiction of the United States.

The state laws did not apply to shipments of liquor moving into the Reservation, and this notwithstanding the Twenty-first Amendment to the United States Constitution. In the twelfth paragraph of the syllabus, the Court said:

> "The provision of the Twenty-first Amendment of the Federal Constitution prohibiting the importation of intoxicating liquors into a state for delivery or use therein is inapplicable to the importation of liquor into a national park, exclusive jurisdiction over which, at least so far as regulatory measures are concerned, has been ceded by the state to the United States".

In elaboration upon this statement, the Court said in the body of the opinion:

> "The state makes the point that Section 2 of the Twenty-first Amendment gives it the right to regulate the importation of intoxicating liquors. Reliance for enforcement is placed upon Sections 49 and 49.2 of the Alcoholic Beverage Control Act. The argument of this claim is bottomed upon our decision in *State Board of Equalization* v. *Young's Market Co.*, 229 U. S. 59, 81 L. Ed. 38, 57 S. Ct. 77, where we held that a statute im-

posing a $500 license fee for importing and a $750 license fee for brewing beer did not violate the commerce clause or the equal protection clause, because the words of the Twenty-first Amendment, 'are apt to confer upon the state the power to forbid all importations' and 'the state may adopt a lesser degree of regulation than total prohibition' (pp. 62, 63)".

The Court, in meeting and rejecting this theory, used this clear and forceful language which is conclusive upon the issue in the case at bar:

> "The lower court was of the opinion that though the Amendment may have increased 'the state's power to deal with the problem * * *, it did not increase its jurisdiction'. With this conclusion, we agree. *As territorial jurisdiction over the Park was in the United States, the state could not legislate for the area merely on account of the Twenty-first Amendment.* There was no transportation *into* California 'for delivery or use therein'. *The delivery and use is in the Park, and under a distinct sovereignty.* Where exclusive jurisdiction is in the United States, without power in the state to regulate alcoholic beverages, the Twenty-first Amendment is not applicable" (Italics ours).

The Court upheld the right of California to tax the liquor, but not to regulate the shipments of the same, and approved a decree of mandatory injunction by the lower court prohibiting interference with shipments of liquor moving into the Reservation. The substance of the final decree in this regard is stated by the Court:

> "The final decree forbids entering upon the premises of complainant; seizing, impeding or interferring with

any shipments to complainant in Yosemite National Park; from instituting any actions or proceedings in any court of law or equity for violations or alleged violations of said Alcoholic Beverage Control Act in respect of the importation, possession or sale in the Park. * * *."

Also, the California Act involved here (quoting in the footnote of the decision, 82 L. Ed., at 1514) made it a crime to bring liquor into the state in violation of the state liquor laws, just as the Oklahoma law provides. *Dunn* v. *United States* (10th Cir.) 98 Fed. (2d) 119; *Hayes* v. *United States* (10th Cir.) 112 Fed. (2d) 417.

The text of 30 American Jurisprudence 383, Section 240 "Intoxicating Liquors", reads:

> "The provision of the Twenty-first Amendment to the Federal Constitution prohibiting the importation of intoxicating liquors into a state for delivery or use therein is inapplicable to the importation of liquor into a national park, exclusive jurisdiction over which, at least so far as regulatory measures are concerned, has been ceded by the state to the United States * * *."

In *Clairmont* v. *United States*, 225 U. S. 551, 56 L. Ed. 1201, there was before the Court the question of whether or not a person having whiskey in his possession as he rode on a train on the railroad right-of-way through the Indian Reservation was guilty of "introducing liquor into the Reservation". The defendant had bought the liquor before getting on the train, and was arrested with the whiskey in his possession while he was on the railroad right-of-way

within the territorial limits of the Indian Reservation. The Court held that this did not amount to bringing liquor *into* the Reservation, saying:

> "The question, then, is whether a person having intoxicating liquor in his possession on a railroad train running on this strip can be deemed to have introduced the liquor 'into the Indian country' within the meaning of the act of 1897. Was the strip 'Indian country', so that the District Court of the United States can be said to have had jurisdiction of the alleged offense?
>
> "In the present case there was no provision, either in the treaty with the Indians, or by act of Congress, which limited the effect of the surrender of the Indian title.
>
> "To repeat, the plaintiff in error was not charged with 'attempting to introduce' the liquor into Indian country, but with the actual introduction. If having the liquor in his possession on the train on this right of way did not constitute such introduction, it is immaterial, so far as the charge is concerned, whether or not he intended to take it elsewhere. Nor is it important that the plaintiff in error was an Indian. The statute makes it an offense for 'any person' to introduce liquor into Indian country.
>
> "Our conclusion must be that the right of way had been completely withdrawn from the reservation by the surrender of the Indian title, and that in accordance with the repeated rulings of this court, it was not Indian country".

In *Fort Leavenworth Railroad Company* v. *Lowe*, *supra*, cited by the Supreme Court of Oklahoma with approval in the above decision of *Utley* v. *State Industrial*

Commission, the United States Supreme Court quoted from a Massachusetts decision, *Mitchell* v. *Tibbets*, 17 Pick. 298, wherein the Court held that the transporting of stone into a United States Navy Yard within the territorial limits of the State of Massachusetts did not amount to the importation of stone into the state. The quoted language is:

> "In *Mitchell* v. *Tibbets*, before the same court, years afterwards, 17 Pick. 298, it was held that a vessel employed in transporting stone from Maine to the navy yards at Charlestown, Mass., a place purchased by the United States with the consent of the State, was not employed in transporting stone within the Commonwealth, and therefore committed no offense in disregarding a statute making certain requirements of vessels thus employed. *The court said that to bring a vessel within the description of the statute, she must be employed in landing stone at, or taking stone from, some place in the Commonwealth*, and that the law of Massachusetts did not extend to and operate within the decision in 8 Massachusetts" (Italics ours).

It must be true that if a state has no right to control the activities of the personnel of a Military Reservation or other matters therein, then it certainly cannot do indirectly what it cannot do directly, and it cannot, by an embargo, prohibit the transportation of liquor, cigarettes or other things into a Military Reservation, when it has no right to regulate the use thereof within the confines of such Government property.

In a very recent case decided March 1, 1943, this Court, in *Pacific Coast Dairy, Inc.*, v. *Department of Agriculture of California*, 87 L. Ed. (Adv. Ops. No. 10) 560, expressly

condemned any effort upon the part of a state to indirectly control activities within a Federal enclave (there the Military Reservation of Moffett Field) by adopting legislation affecting persons within a state doing acts preparatory to performing some service or making some sale within the enclave. In that case, California passed an amendatory statute to the California Milk Control Act for the express purpose of controlling and regulating the supplying and furnishing of milk within Federal enclaves which the original Act was held not to cover[15].

This Court, however, struck this amendment down because of the complete lack of power to regulate or control or legislate for activities, transactions and commerce of a Federal possession, using this language:

> "To hold otherwise would be to affirm that California may ignore the Constitutional provision that 'This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; * * * shall be the Supreme Law of the land'; (Article 6, Clause 2) * * * It would be denial of the federal power 'to exercise exclusive Legislation (citing *James* v. *Dravo Contracting Co.*, 302 U. S. 134, 141, 82 L. Ed. 155, 162, 114 A. L. R., 218)'. As respects such federal territory Congress has the combined powers of a general and a state government (citing *Stoutenburgh* v. *Hennick*, 129 U. S. 141, 147, 32 L. Ed. 637, 638, 9 S. Ct. 256)".

In elaborating upon this holding and commenting upon the State's "assertion that the law in essence is the regulation of conduct wholly within the State's jurisdic-

15. Consolidated Milk Producers v. Parker (Cal.) 123 Pac. (2d) 449.

tion", the Court used this language in the fourth paragraph of the syllabus:

> "The doctrine that a state is not disenabled from policing its own concerns by the mere fact that its regulations may beget effects on those living beyond its borders, does not apply to transactions in territory within the state over which the Federal Government has acquired exclusive jurisdiction".

Another reason the Oklahoma statutes could not operate upon this interstate shipment is that Congress has occupied the field, and it is not necessary that Congress enact specific inhibitive legislation prohibiting the state from acting where it has undertaken to enter the field. *Southern Railway Company* v. *Reed*, 222 U. S. 424, 56 L. Ed. 257.

Point III.

This shipment violates no Federal law either under the Assimilative Crimes Act or otherwise; and in any event, since it was not subject to state law, it's wrongful seizure by petitioners was properly vindicated by injunction.

The Assimilative Crimes Act[16], like any other statute, must have a reasonable construction, and its interpretation should be governed by the intent of Congress as nearly as may be ascertained. It is our position that this Act does not include within its reach the adoption as Federal laws of every regulatory, licensing and other state measure which provides for some sort of punishment for its viola-

16. Quoted ante Page 2, Footnote 2.

tion. It is unthinkable that Congress should so intend, because this would give over the government of Federal enclaves to a great degree into the hands of the individual states. And, though this Act was not expressly mentioned, this Court, this year emphatically condemned such a condition by any means. *Pacific Coast Dairy, Inc.*, v. *Department of Agriculture of California, supra.*

Looking to the history of this Act, which has been in effect for more than a century, it will be seen that its purpose was merely to satisfy a lack of a comprehensive Federal criminal code. There are no common law offenses against the United States[17], and the criminal jurisdiction of the United States is derived exclusively from specific statutes. The Federal criminal code is rather meager, comparatively[18].

It seems clear that this act should operate to adopt as Federal laws for Federal areas only criminal statutes in the popular sense of the word. Statutes prohibiting offenses in-

17. Jerome v. United States, 318 U. S. 101, 87 L. Ed. (Adv. Ops.) 433, 436; Hudspeth v. Melville, 127 Fed. (2d) 373.

18. The forerunner of the instant statute was the Act of March 3, 1825 (Chapter 65, 4 Stats at Large 115) whose author was Mr. Justice Story. He said in regard to this section:

"'The Criminal Code of the United States is singularly defective and inefficient * * * Few, very few, of the practical crimes (if I may so say) are now punishable by statutes, and if the courts have no general common-law jurisdiction (which is a vexed question), they are wholly dispunishable. The state courts have no jurisdiction of crimes committed on the high seas, or in places ceded to the United States. Rapes, arsons, batteries, and a host of other crimes may in these places be now committed with impunity. Suppose a conspiracy to commit treason in any of these places, by civil persons, how can the crime be punished? These are cases where the United States have an exclusive local jurisdiction. And can it be less fit that the Government should have power to protect itself in all other places where it exercises a legitimate authority? That Congress has power to provide for all crimes against the United States is incontestable.'" (Life of Justice Story, Boston, 1851, Vol. 1, p. 293) United States v. Press Publishing Company, 219 U. S. 1, 55 L. ed. 65.

volving moral turpitude, and from the standpoint of the National Government, the laws governing the sale, transportation and use of intoxicating liquors do not fall within that category, but come rather within the field of mere regulatory and licensing measures.

Though there is a dearth of authority upon the scope of the Assimilative Crimes Act, in our opinion this Court in *Collins* v. *Yosemite Park Company, supra*, held, at least by implication, that the Assimilative Crimes Act did not put into operation in Federal enclaves state liquor laws, even though they provided a penalty for their violation[19]. Although the California license or permit law is more liberal than that of Oklahoma, that is a matter of degree. In neither state are alcoholic liquors absolutely prohibited, and in both states violations of the liquor laws are made penal offenses.

Furthermore, it would seem to be an irresistible conclusion that only such state statutes as are harmonious with Federal policy are adopted as Federal laws in United States enclaves. Where the United States acquires a tract of land from another sovereign, only such "local law *not inconsistent with Federal policy* remains in force, until altered by National legislation." *James Stewart & Co., Inc.* v. *Sadrakula*, 309 U. S. 94, 84 L. Ed. 596; *Pacific Coast Dairy, Inc.* v. *Department of Agriculture*, 318 U. S. 285, 87 L. Ed.

19. We are supported in this view by the Three-Judge Oregon Court in Crater Lake National Park Company v. Oregon Liquor Control Commission, 26 F. S. 363, wherein it was held on the authority of the Yosemite Park Company case, in the first syllabus:
"Oregon Liquor Control Act is inapplicable to Crater Lake area, which was ceded by state to and accepted by Federal Government, notwithstanding Federal Assimilative Crimes Act."

560. And under the Full Faith and Credit Clause of the Constitution, a state is not required to give effect to the statutes and laws of other states contrary to its own policy. *Bradford Electric Light Company* v. *Clapper*, 286 U. S. 145, 76 L. Ed. 1027; *Pink* v. *A. A. A. Railway Express, Inc.*, 314 U. S. 201, 86 L. Ed. 152.

This Court had held that statutes will be construed to arrive at a reasonable result and will even disregard the literal phraseology to reach what is apparently the true intention of Congress and a common sense construction. *United States* v. *American Trucking Association*, 310 U. S. 534, 84 L. Ed. 1345.

If the statutes of the state as to intoxicating liquors are made Federal laws by the Assimilative Crimes Act, then there is no reason why the state statutes as to beer and non-intoxicating beverages (37 O. S. A., Chapter 2, Section 151 to 197) which likewise provide a penalty for their violation, would not likewise be operative and govern activities of the personnel on the Reservation.

In truth, if the contentions of the petitioners are sustained, it will mean that all Federal enclaves will be just as effectively under the legislative dominion of the state as if it had complete jurisdiction. This is not the law as indicated by the position taken in *Pacific Coast Dairy, Inc.*, v. *Department of Agriculture*, *supra*.

Oklahoma Liquor Laws

It is our contention that there has been no violation of the liquor laws of Oklahoma by this shipment.

The intoxicating liquor statutes of Oklahoma prohibit the sale of liquor therein, but do not prohibit its purchase[20]. Nor do such laws prohibit the personal use of liquor nor possession thereof for personal use.

There is no statute in Oklahoma making mere possession of intoxicating liquor a criminal offense. 37 O. S. A. 82, Laws 1913, Chapter 26, Section 6, as amended by Laws 1933, Chapter 153, Section 3, only makes possession of liquor in excess "of one quart * * * *prima facie* evidence of an intention to convey, sell or otherwise dispose of such liquor[21]".

The transportation of intoxicating liquor is prohibited only (1) from a point within the state to another point within the state; in other words, a purely intrastate shipment. 37 O. S. A. 1:

> "It shall be unlawful for any person, individual or corporation * * * to ship, or in any way convey, such liquor from one place within this state to another place therein except the conveyance of a lawful purchase as herein authorized * * * *";

20. 37 O. S. A., Section 1, Laws 1933, Chapter 153, Page 338, Section 2 (quoted in full in petitioners' brief) provides in part that it shall be unlawful for any person, individual or corporation "* * * to manufacture, sell, barter, give away, or otherwise furnish any liquors * * *."

21. Whitwell v. State, 72 Okla. Cr. 192, 114 Pac. (2d) 489, 490; Haltom v. State, 58 Okla. Cr. 117, 50 Pac. (2d) 744, 746; Hull v. State, 61 Okla. Cr. 12, 65 Pac. (2d) 423, 425; Stump v. State, 66 Okla. Cr. 391, 92 Pac. (2d) 616, 619; Knighton v. State, 64 Okla. Cr. 322, 79 Pac. (2d) 1030, 1032; Robinson v. State, 71 Okla. Cr. 75, 108 Pac. (2d) 196, 198.

(2) the transportation of intoxicating liquor into the state from another state where it is destined for delivery to a point within the state. In other words, transportation for importation into Oklahoma. 37 O. S. A. 41, S. L. 1939, Page 16, Section 1, *et seq.*

The title of this Act reads:

> "AN ACT creating and providing for a permit system for the importation and transportation of intoxicating liquor, containing more than four per cent of alcohol by volume, into the State of Oklahoma for scientific, scaramental, medicinal, or mechanical purposes; forbidding importation of such liquor without permit; fixing fees; providing penalties; repealing Sections 2597 and 2598, Oklahoma Statutes, 1931; and declaring an emergency".

Indeed, it is fundamental that any effort on the part of the state to prohibit any transportation of liquor except intrastate transportation or importation into the state would be invalid as impinging upon the Commerce Clause of the United States Constitution.

Petitioners contend that the Oklahoma Criminal Court of Appeals has held otherwise, citing as an example the early case of *Huff* v. *State*, 9 Okla. Cr. 675, 133 Pac. 265. In that case the question of interstate commerce was not involved or discussed, the only question being as to whether one point on the highway to another point thereon was within the purview of the statutory language of "from one place within this state to another place therein", as the Court had held in an earlier case that transportation from

one place in a building to another place in the same structure did not satisfy this language of the statute. Nor has search revealed any case holding that the Oklahoma statutes cover transportation except intrastate or importations.

As a matter of fact, our Supreme Court has squarely held in *Brandon* v. *State*, 66 Okla. 69, 167 Pac. 212, that an interstate shipment is not subject to seizure while it is in the hands of the carrier:

> " 'In order to have the state laws attach to an interstate shipment of liquor, it must affirmatively appear from the evidence that such shipment, or such part thereof as is sought to be confiscated, has been delivered by the carrier or its agent to the consignee or his agent. Where it is admitted by the state, shown by the uncontradicted evidence, or found by the court from evidence reasonably tending to support such finding, that intoxicating liquors seized were at the time of the seizure in the possession of an interstate carrier, such liquors cannot legally be seized or confiscated, so long as such shipment retains its interstate character'. *Robertson* v. *State*, 46 Okla. 691, 149 Pac. 194, and the authorities there cited".

In Section 1, Chapter 186, Laws 1917, 37 O. S. A. 38, it is provided that it shall be unlawful for any person to receive within the state of Oklahoma from a common or other carried any shipment of intoxicating liquors or possess any such liquors received from a common carrier, even though such receipt or possession might be for personal use. The Circuit Court of Appeals justifiably held that it would seem that this statutory provision was unconstitutional in view of several state decisions declaring invalid two separate

sections that undertook to restrict possession for personal use. This particular section has not been so declared because the question has never been raised.

In the case of *Ex parte Wilson*, 6 Okla. Cr. 451, 119 Pac. 596, the Court in an exhaustive opinion held that:

> "Section 4, c. 70, Session Laws, 1911, which provides that it shall be unlawful for any person to have or keep in excess of one quart of spirituous, vinous, fermented or malt liquors, or any imitation thereof, or substitute therefor, or in any manner permit any other person to have or keep any such liquors, etc., was not enacted within the reasonable exercise of the police power and is therefore unconstitutional and void".

The section there involved was also enacted as Section 4, Chapter 153, O. S. L. 1933, 37 O. S. A. 31, practically without change.

The companion section to this one is Section 5, Chapter 70, O. S. L. 1910-11, 37 O. S. A. 32, and was likewise held unconstitutional for the same reason in *Morse* v. *State*, 63 Okla. Cr. 445, 77 Pac. (2d) 757 (1938), quoting with approval from *Ex parte Wilson, supra.*

In *Morse* v. *State* it is pointed out furthermore that these two sections of the statute, known as the quart and gallon laws, have been wholly superseded by 37 O. S. A. 82, which is now the only possession statute in force in Oklahoma, and it, as pointed out heretofore, does not make mere possession a crime but is only an evidence statute.

Coming now to the analogy of the holding of the aforesaid statutes restricting possession of liquor for personal

use unconstitutional, we wish to direct sharp attention to this language in the opinion of *Morse* v. *State, supra* (1. c. 458):

> "In the case of *Ex parte Wilson*, 6 Okla. Cr. 451, 119 Pac. 596, this court, in an elaborte opinion held section 4 of the above act unconstitutional, for the reason that the Legislature did not have the power to absolutely prohibit the keeping of intoxicating liquors for one's own individual use. The constitutionality of section 5 was not passed upon by the court in this case, but the two sections of the statute being analogous it is clear that the court would have held section 5 unconstitutional for the same reason that section 4 was held unstitutional".

Under this holding we believe it cannot be gainsaid that the Circuit Court was well justified in saying with reference to 37 O. S. A. 38, the statute prohibiting receipt of liquor from a carrier for personal use, "it would seem that this section is unconstitutional". See also *Brickey* v. *State*, 55 Okla. Cr. 451, 32 Pac. (2d) 743.

We respectfully submit that, there being no sale in Oklahoma, the liquor being acquired for the personal use of the officers in the Reservation, there being no importation "into" the state, and the liquor being in the hands of a carrier at the time of its seizure, there was no violation of the Oklahoma liquor laws and the seizure by the state officers, the petitioners, was wrongful.

If these statutes of the state were in any wise applicable to this shipment, they would only be such as Federal laws under the Assimilative Crimes Act (though we

deny that they were adopted by this act); they are not operative as state laws[22].

The petitioners, state enforcement officers, had no power or authority over the enforcement of such laws, and the respondent common carrier was entitled to have injunctive relief against the wrongful withholding of said liquor and interference with its delivery[23].

The sale of the liquor here involved was consummated in the State of Illinois, as the petitioners have admitted[24], and, the courts below were right in holding that there was no violation of 10 USCA Section 1350, 31 Stats: 758, prohibiting the sale of intoxicating liquors on Military Reservations.

CONCLUSION

In its final analysis, the gravaman of this case is the issue of whether the laws of a state have any more application to or control over liquor shipments originating outside the state destined to a Federal Military Reservation within its boundaries than shipments passing through and beyond its geographical confines.

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22. Franklin v. United States, 216 U. S. 559, 568; United States v. Press Publishing Company, 219 U. S. 1, 8; Puerto Rico v. The Shell Company 302 U. S. 253, 266.

23. Leisy v. Hardin, 135 U. S. 100; Bowman v. Chicago and Northwestern Ry. Co., 125 U. S. 465; McFarland v. American Sugar Refg. Co., 241 U. S. 79, 84-5; Barnett v. State, 243 Ala. 410, 9 So. (2d) 267, 268; McCanless v. Graham, 177 Tenn. 57, 146 S. W. (2d) 137, 138.

24. In order to refute a possible claim of that the Officers Club Mess being a Federal instrumentality was beyond the powers of the state, the petitioners stated in their brief in the Circuit Court: "Moreover, the Officers Club was not concerned with this shipment, which was neither ordered nor purchased by nor to be the property of the Club"

That shipments into such Federal enclaves are not importations into the state is the irresistible conclusion compelled by the foregoing authorities and particularly the Yosemite case.

If this were not true, a state could, indirectly though none the less effectively, in large measure control, regulate and restrict activities within Military and other Federal enclaves through embargo. By such means, Nations have been brought to their knees in surrender.

The judgment of the trial court should be affirmed.

Respectfully submitted,

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January, 1944.

SUPREME COURT OF THE UNITED STATES.

No. 447.—October Term, 1943.

Walter B. Johnson, T. R. Husted, B. A. West, Charles Riggs, George Goff, Mike McGrew, Lewis Kolb, J. M. Gentry, and Ivan Kennedy, Petitioners,

vs.

Yellow Cab Transit Company, a Corporation.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit.

[March 13, 1944.]

Mr. Justice Black delivered the opinion of the Court.

Petitioners are officials of Oklahoma State and Oklahoma County concerned with enforcement of Oklahoma's liquor laws. Respondent is a common carrier by motor vehicle authorized by the Interstate Commerce Commission to transport in interstate commerce various commodities, including wines and liquors. See U. S. C. Title 49, c. 8. In regular course of business the respondent carrier undertook to transport 225 cases of wines and liquors from East St. Louis, Illinois, through Missouri, into Oklahoma and thence to a consignee at Fort Sill, a military reservation within the boundaries of Oklahoma. While the vehicle carrying the liquors was momentarily stopped at Oklahoma City for the purpose of loading and unloading other freight, the petitioner officials forcibly seized and took away the liquors.

The carrier filed a complaint in the federal District Court alleging that the seizure constituted an unlawful interference with its authorized interstate transportation, and praying that the Court order the officials to return the liquors so that it might deliver them to the consignee at Fort Sill. The answer to the complaint, in substance, admitted the material facts relative to the shipment and seizure of the liquors but denied the allegation of the complaint that the seizure was unlawful. The answer did not allege that judicial proceedings concerning the seized liquor were pending, or were to be commenced, in an Oklahoma state court. After

a trial on stipulated facts, the District Court ordered the liquors returned to the carrier and forbade the officials to interfere with completion of the shipment. 48 F. Supp. 594. The Circuit Court of Appeals, one Judge dissenting, affirmed. 137 F. 2d 274.

Questions presented in the petition for review concerning important state and federal relationships with regard to federal enclaves prompted us to grant certiorari. 320 U. S. —. Argument has revealed, however, that the determinative issues are more narrow: (1) Did transportation of the liquors through Oklahoma violate that State's law so as to justify their seizure? (2) Should the District Court have denied the carrier equitable relief because of the "unclean hands" doctrine, even though seizure of the liquors by the officials was illegal? This second question rests on the disputed premise that introduction of the liquors into Fort Sill would have violated the laws of the United States.

Petitioners do not claim, nor could they claim, that either of these two separate questions should be decided in their favor on the ground that Oklahoma has power to control liquor transactions on the Fort Sill Reservation. With certain minor exceptions not here material, Oklahoma ceded to the United States in 1913 whatever authority it ever could have exercised in the Reservation.[1] The Oklahoma Supreme Court has recognized that the general power to govern the Fort Sill area is vested in the United States, not in Oklahoma,[2] and our decisions lead to the same conclusion.[3]

First. Since power to govern Fort Sill is in the United States, and since the seized liquors were not to be sold, delivered or otherwise disposed of in Oklahoma proper, as distinguished from Fort Sill, the only Oklahoma laws called to our attention which could have justified the seizure are those which apply to liquor transportation. No Oklahoma law purports on its face to prohibit or regulate interstate shipments of liquor into and through the state to another state, or to an area subject to the exclusive jurisdiction of the United States. And we were informed at the bar by Oklahoma's legal representative that no state statute had been construed by any state court as applying to such through shipments. Oklahoma

[1] Oklahoma Laws, 1913, c. 52, p. 90.

[2] See Utley *v.* State Industrial Commission, 176 Okla 255; In re Annexation of Reno Quartermaster Depot Military Reservation to Independent School District No. 34, Canadian County, 180 Okla. 274.

[3] See Collins *v.* Yosemite Park Co., 304 U. S. 518, 533; Pacific Coast Dairy, Inc. *v.* Department of Agriculture of California, 318 U. S. 285, 294.

law does make it unlawful "to import, bring, transport, or cause to be brought or transported *into the State* . . . intoxicating liquor . . . without a permit . . . as hereinafter provided." Okla. Stat. (1941) Title 37, § 41. The argument is that the Oklahoma legislature intended this statute to apply to liquor imported into the Fort Sill Reservation because the latter is located within the exterior boundaries of Oklahoma. Were this statute intended to do no more than provide a means whereby the state could protect itself from illegal liquor diversions within the area which Oklahoma has power to govern, the interpretation asked might well be an acceptable one. *Duckworth* v. *State of Arkansas*, 314 U. S. 390; *John Thomas Carter and Eugene Pearson Macemore* v. *The Commonwealth of Virginia*, decided January 31, 1944. But the statute has no such limited purpose. No permit to transport liquor into Oklahoma can be obtained at all except for scientific, mechanical, medicinal, industrial, or sacramental purposes. Okla. Stat. (1941) Title 37, § 42. To construe the state statute in the manner urged would be to say that, although Oklahoma admittedly has no power directly to regulate the liquor traffic on the Reservation, the Oklahoma legislature intended practically to exclude from the Reservation liquor which might be put to legal uses under controlling United States laws. Neither the words nor the scheme of the statute in question, nor any other relevant material pointed out to us, indicate that the Oklahoma legislature had such a purpose. Had the legislature expressed such a purpose, questions would be raised which we need not here consider. See *Collins* v. *Yosemite Park & Curry Co.*, 304 U. S. 518, 533; *Pacific Coast Dairy, Inc.* v. *Department of Agriculture of California*, 318 U. S. 285, 295. Consequently, we find no justification for the seizure in Oklahoma law.

Second. But it is said that despite the fact the seizure was illegal and wholly without justification, the consignee could not have received the liquors without violating the laws of the United States and for that reason the District Court should have denied the carrier any relief under the "clean hands" doctrine.

We may assume that because of the clean hands doctrine a federal court should not, in an ordinary case, lend its judicial power to a plaintiff who seeks to invoke that power for the purpose of consummating a transaction in clear violation of law.[4]

[4] See generally 2 Pomeroy's Equity Jurisprudence (5th Ed.) §§ 402, 403. Cf. Bentley v. Tibbals, 223 F. 247, 252; Bonnie & Company v. Bonnie Bros., 160 Ky. 487, 495.

But this does not mean that courts must always permit a defendant wrong doer to retain the profits of his wrong doing merely because the plaintiff himself is possibly guilty of transgressing the law in the transactions involved.[5] The maxim that he who comes into equity must come with clean hands is not applied by way of punishment for an unclean litigant but "upon considerations that make for the advancement of right and justice." *Keystone Driller Co.* v. *General Excavator Co.*, 290 U. S. 240, 245. It is not a rigid formula which "trammels the free and just exercise of discretion." *Ibid.*, 245, 246. Therefore, before deciding the applicability of the maxim to the case at hand, we must examine the particular transactions and circumstances involved together with the federal laws which are alleged to taint these transactions with illegality.

As shown by the stipulated facts in this record, the circumstances of the liquor shipment were as follows: Fort Sill had an Officers' Club, which provided among other things an officers' mess, living quarters for some Officers, and other customary club facilities. Several hundred Officer-members gave to the Club Secretary, himself an Officer, separate written orders for liquor together with money or checks in payment for the respective orders. Acting for the Officer-members, the Secretary telephoned from Fort Sill to a dealer at East St. Louis, Illinois, and ordered the liquors shipped to the Club. The dealer delivered the liquors to the respondent-carrier under a uniform through bill of lading. It was this shipment which the state officials seized. Had the shipment not been seized it would have arrived at the Club for delivery to the several Officers who had paid for it.

It is first contended that purchase and delivery of the liquors was in violation of U. S. C., Title 10, § 1350, set out in the margin.[6] The agreed facts, summarized above sufficiently show that the transactions were not in violation of this statute.

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[5] See, e. g., Catts v. Phalen, 2 How. 376; Kinsman v. Parkhurst, 18 How. 289, 293; Stark v. Crant, 16 N. Y. S. 526; Martin v. Hodge, 47 Ark. 378.

[6] "The sale of or dealing in, beer, wine or any intoxicating liquors by any person in any post exchange or canteen or army transport or upon any premises used for military purposes by the United States, is hereby prohibited. The Secretary of War is hereby directed to carry the provisions of this section into full force and effect." 31 Stat. 758; U. S. C. Title 10, § 1350. See Note 9, *infra*.

Petitioners next argue that the liquor transactions here involved were in violation of the assimilative crimes statute.[7] This statute, it is said, adopts all of the various penal statutes of Oklahoma relating to liquor and makes them the federal law applicable to the Fort Sill Reservation. Cf. *United States* v. *Press Publishing Company*, 219 U. S. 1; *Franklin* v. *United States*, 216 U. S. 559. Petitioners' argument as to the applicability of the assimilative crimes statute raises at least three distinct questions, no one of which is easily resolved: (1) Which, if any, of the Oklahoma penal statutes are so designed that they could be adopted by the assimilative crimes statute and applied to Fort Sill?[8] See opinions of Circuit Court of Appeals, *supra*; cf. *Murray* v. *Joe Gerrick and Co.*, 291 U. S. 315. (2) If there are Oklahoma statutes which could be so adopted, are all or any of them in conflict with federal policies as expressed by Acts of Congress other than the assimilative crimes statute or by valid Army Regulations[9] which have

[7] "Whoever, within the territorial limits of any State, . . . but within or upon any of the places now existing or hereafter reserved or acquired, described in section 272 of the Criminal Code . . . , shall do or omit the doing of any act or thing which is not made penal by any laws of Congress, but which, if committed or omitted within the jurisdiction of the State, Territory or district in which such place is situated, by the laws thereof in force on February 1, 1940, and remaining in force at the time of the doing or omitting the doing of such act or thing, would be penal, shall be deemed guilty of a like offense and be subject to a like punishment." 54 Stat. 234, U. S. C. Title 18, § 468. Section 272 of the Criminal Code, referred to in this Act, is broad enough to include the Fort Sill Reservation. 35 Stat. 1143.

[8] The Oklahoma liquor statutes pertaining to liquor imports provide one illustration of the difficulties inherent in this question. These penal statutes are designed to enforce a system of licensing such imports by special permits issued by a state agency. Okla. Stat. (1941) Title 37, §§ 41-48. Importation of liquors without a special permit is made penal. *Ibid.*, §§ 41, 46. To hold, therefore, that the assimilative crimes statute adopts Oklahoma's penal liquor laws the Court might further have to hold that that statute compels federal officials on the Fort Sill Reservation to apply for and obtain state permits before they can lawfully import any liquors for any purpose. And a strong argument might be made that had Congress intended such a drastic result, it would have considered the problem and used more express language. See Note 7, *supra*; Senate Report No. 1699, Senate Judiciary Committee, 76th Cong., 3d Sess.; House Report No. 1584, House Judiciary Committee, 76th Cong., 3d Sess. Cf. Collins v. Yosemite Park Co., 304 U. S. 518, 533.

[9] Army regulations have declared certain liquor policies for Army reservations generally. See, e. g., A. G. 250.1 (1-20-43), concerning the sale of liquor upon premises used for military purposes by the United States, published by the War Department on January 25, 1943, in Circular No. 29; and A. R. 210-65, concerning Army Exchanges, published by the War Department on March 19, 1943. Petitioners have not contended that the liquor transactions here were contrary to any Army Regulations, and no Regulations have come to our attention which would intiicate that there is a basis for such a contention.

the force of law?[10] Cf. *Stewart & Co.* v. *Sadrakula*, 309 U. S. 94, 99-104. (3) Assuming that certain Oklahoma statutes are adaptable, and are not inconsistent with federal policies, would such statutes make penal the liquor transactions here stipulated to have taken place? Inextricably involved in each of the three questions is the further problem of whether certain of the Oklahoma liquor statutes may be inconsistent with Oklahoma's constitution as interpreted by the Oklahoma Supreme Court. See opinions of the Circuit Court of Appeals, *supra*; *Ex parte Wilson*, 6 Okla. Cr. 451; *Morse* v. *State*, 63 Okla. Cr. 445.

Considering the difficulty and importance of a correct decision of the novel issues which an attempt to construe this federal criminal statute would present, together with the other circumstances of the present case, we are convinced that in the interest of sound administration of justice we should refrain from a complete exploration of these issues in this proceeding, especially since these issues are only collateral to the principal issue of the legality of the seizure of the liquor. Were we to decide that the assimilative crimes statute is not applicable to this shipment of liquors, we would, in effect, be construing a federal criminal statute against the United States in a proceeding in which the United States has never been represented. And, on the other hand, should we decide the statute outlaws the shipment, such a decision would be equivalent to a holding that more than 200 Army Officers, sworn to support the Constitution, had participated in a conspiracy to violate federal law. Not only that, it would for practical purposes be accepted as an authoritative determination that all army reservations in the State of Oklahoma must conduct their activities in accordance with numerous Oklahoma liquor regulations, some of which, at least, are of doubtful adaptability. And all of this would be decided in a case wherein neither the Army Officers nor the War Department nor the Attorney General of the United States have been represented, and upon a record consisting of stipulations between a private carrier and the legal representatives of Oklahoma.

Whether the declaration of policies contained in these various regulations indicates an intention of the War Department to permit all liquor transactions not expressly prohibited, and whether, if it does, the War Department has the power under Acts of Congress to permit such transactions, seem open questions.

[10] Standard Oil Co. of California v. Johnson, 316 U. S. 481, 484.

Nor is it any answer to say that the carrier should be compelled to sue in the Oklahoma state courts to reclaim the liquors in order to give the Oklahoma courts the opportunity collaterally to pass upon the question of whether these liquor transactions violate the federal assimilative crimes statute. That broad question, though some parts of it involve a consideration of the proper scope of the state law adopted by the federal government, is in the final analysis a question of the correct interpretation of a federal criminal statute, and therefore an issue upon which federal courts are not bound by the rulings of state courts. *Puerto Rico* v. *The Shell Co. (P. R.), Limited*, 302 U. S. 253, 266. Indeed Congress has vested in the federal courts exclusive jurisdiction over the trial of all federal crimes. Judicial Code § 256 as amended. And so, even if the carrier could bring suit in an Oklahoma state court to reclaim the liquor, a point which is itself subject to some doubt,[11] the federal District Court should not for that reason refuse relief in the present suit.

The ultimate question in this part of the case is whether the carrier, whose complete good faith is in no way questioned, should have the court's doors shut to it. So to hold would be to say that the state officials, who so far as this record shows, had no search warrant or judicial process of any kind,[12] could retain liquors which they seized without authority of law. We do not find here any "unconscientious or inequitable attitude" on the part of the carrier. *International News Service* v. *The Associated Press*, 248 U. S. 215, 245. And so far as this record shows, the carrier, in seeking relief in the courts against the unlawful seizure, has proceeded in the only "practicable and adequate way"[13] available.

[11] Nothing in the record or briefs justifies the conclusion that the carrier could bring such a proceeding in the state courts. And see Okla. Stat. (1941) Title 37, §§ 72, 86, and 89; Blunk v. Waugh, 32 Okla. 616; Lee v. State, 180 Okla. 643; cf. 1942 Chevrolet Automobile Motor No. B A-193397 v. State, 191 Okla. 26, 27. Nor has there been any attempt to show that, if the carrier could bring such a proceeding, the Army Officers, the War Department, and the Attorney General of the United States could intervene on the collateral issue of "clean hands."

[12] Under Oklahoma law there are no "property rights" in liquor. Okla. Stat. (1941) Title 37, § 72. Officers with power to execute criminal process may arrest without a warrant one who violates the state liquor laws, and seize the property used in the violation, and it is their duty to take the property before a Court which may order it forfeited and destroyed. *Ibid.*, §§ 89, 90. As stated in the body of the opinion, the record does not show that proceedings of any kind were ever instituted, or sought to be instituted, in the state courts.

[13] McFarland v. American Sugar Refining Company, 241 U. S. 79, 84-85; see also Bowman v. Chicago, etc. Railway Company, 125 U. S. 465.

If the carrier's delivery of these liquors on the Fort Sill Reservation would violate any federal law, federal agencies exist which are charged with responsibilities to institute appropriate proceedings against the carrier in federal tribunals. In such proceedings the parties would be the United States and the carrier, and the issue of violation of federal laws would be directly, and not collaterally, presented. The complicated federal questions involved, concerning various federal statutes as well as Army rules and regulations, could be answered upon an adequate presentation of all factors essential to a right and just determination.

And, similarly, if the several hundred Army Officers who ordered and paid for these liquors have acted contrary to United States Statutes, Army Regulations, or Orders of the Post Commandant, it is not to be doubted that the Army or some other United States agency is capable of determining what course shall be pursued. Should the United States determine to proceed in the matter it could do so at such time and place as least would hamper essential military training, and the Army Officers would be heard before they would be stigmatized as law breakers and subjected as such to Army discipline. We will not, at this time, and upon this inadequate record, resolve all doubts against the lawfulness of their conduct in order to deny relief against a plainly unlawful seizure of their property from an interstate carrier whose good faith has not been questioned.

Affirmed.

Mr. Justice FRANKFURTER, dissenting.

Mr. Justice ROBERTS and I are unable to agree with the Court's decision.

The ultimate issue in this case is whether a federal court should, by issuing an injunction, aid in the consummation of what appears to be a violation of the Criminal Code of the United States. For it must not be forgotten that a mandatory injunction, the relief sought in this suit, "is an extraordinary remedial process which is granted, not as a matter of right but in the exercise of a sound judicial discretion." *Morrison* v. *Word*, 266 U. S. 481, 490.

A large shipment of wine and spirituous liquors was seized by law-enforcement officers of the State of Oklahoma while the liquor had temporarily come to rest at the terminal of the Transit Com-

pany. The liquor, in course of transit from East St. Louis, Illinois, to the Fort Sill Military Reservation, was destined for the Officers Club at the Reservation for delivery to several hundred members of the Club on whose behalf its secretary was managing the importation of the liquor. Upon seizure the liquor was deposited in the County Court House of Oklahoma County, where it is held as an illegal shipment of intoxicating liquor subject to forfeiture and destruction. Thereupon the Transit Company brought this suit for a mandatory injunction against the state officers, requiring them to return the shipment and to refrain from interfering with its delivery by the Transit Company at the Reservation. The injunction issued and the Circuit Court of Appeals, in two separate opinions, approved, with one judge dissenting. 48 F. Supp. 594; 137 F. 2d 274.

The facts establish that that which was done, if it had been done in Oklahoma proper, would under its laws have constituted a misdemeanor. Delivery of the liquor on the Reservation would therefore be an offense under the federal criminal law by virtue of the Act of June 6th, 1940, 54 Stat. 234, whereby Congress made applicable to the Reservation the penal laws of Oklahoma in existence on February 1, 1940, 18 U. S. C. § 468. But even if there were doubt that the importation of the liquor into the Reservation under the circumstances of this record would offend the Criminal Code of the United States, on the ground that the act if committed within the jurisdiction of Oklahoma "by the laws thereof in force on February 1, 1940 . . . would be penal", equity should resolve the doubt in favor of law by denying the extraordinary remedy of injunction instead of resolving it against law by granting the injunction.

Oklahoma is, colloquially speaking, a dry State. Only for strictly defined purposes may liquor from without the State be lawfully brought into it for consumption. Prohibited importations are penalized. If a transaction like the one before us related wholly to Oklahoma soil it would—there can hardly be doubt—be outlawed. The Circuit Judge who speaks with special knowledge of Oklahoma law assures us that "the State of Oklahoma, by its Constitution and laws, makes it unlawful to possess, transport, furnish, or receive this particular shipment of intoxicating liquor, and it is therefore contraband and subject to seizure and confiscation under the laws of the State," 137 F. 2d at 279. Judge Murrah calls

specific attention to an Oklahoma statute which makes it a misdemeanor "for any person in this State to receive directly or indirectly any liquors, the sale of which are prohibited by the laws of this State, from a common or other carrier."[1] The opinion of Judge Phillips recognizes that this Act of 1917 penalizes the transaction before us within Oklahoma, but rejects its bearing when a federal court is asked to grant an injunction involving this law by suggesting that this statute is "unconstitutional". He bases this suggestion on the argument that inasmuch as the Oklahoma Supreme Court has held that a statute making mere possession of over one quart of spirituous liquors unlawful is not "a reasonable exercise of the police powers", and therefore beyond the power of the legislature to make unlawful, *Ex parte Wilson*, 6 Okla. Cr. 451, 475, "it must likewise be beyond its power to make unlawful the possession of intoxicating liquor for personal use received from a common carrier." 137 F. 2d at 277.[2] In other words, it is argued that because the Oklahoma Supreme Court held that the mere possession of liquor cannot be made a crime by Oklahoma, Oklahoma cannot prohibit the receipt of liquor from a carrier. On such reasoning a law that has been on the Oklahoma statute books for more than twenty-five years, and during that period actively enforced and never questioned, is thrown into discard when a federal court is asked to exercise its duty of discretion in granting the

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[1] "Section 1. It shall be unlawful for any person in this State to receive directly or indirectly any liquors, the sale of which are prohibited by the laws of this State, from a common or other carrier.

"It shall also be unlawful for any person in this State to possess any liquor, the sale of which are prohibited by the laws of this State, received directly or indirectly from a common or other carrier in this State. This section shall apply to such liquors intended for personal use, as well as otherwise, and to interstate as well as intrastate shipments or carriage. Any person violating any provision of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than $50.00 nor more than $500.00 and by imprisonment for not less than thirty days nor more than six months; Provided, however, that scientific institutions, universities and colleges, and bonded apothecaries, druggists, hospitals or pharmacists may receive and possess pure grain alcohol, as provided by the laws of this State, to be used only for such purposes as are prescribed by the laws of this State." Laws 1917, ch. 186, p. 350, § 1.

[2] Ex parte Wilson was decided in 1911. In 1913, the Oklahoma legislature enacted a statute which made the possession of more than one quart of liquor "*prima facie* evidence of an intention to convey, sell or otherwise dispose of such liquors". Laws 1913, c. 26, p. 48, § 6, 37 O. S. A. § 82. The validity of this statute was upheld (Caffee v. State, 11 Okla. Cr. 485), and the Oklahoma court ruled that it superseded the 1911 Act which had been held invalid. Cf. Jenkins v. State, 28 Okla. Cr. 249; Morse v. State, 63 Okla. Cr. 445, 458.

extraordinary relief of an injunction. I am unable to follow such reasoning because Oklahoma law makes it baseless. The validity of this provision, as already indicated, has been taken for granted by the Oklahoma courts. It was the subject of litigation in *De Hasque* v. *Atchison, T. & S. F. Ry. Co.*, 68 Okla. 183, and *Crossland* v. *State*, 74 Okla. 58, and a conviction under this Section was sustained in *Walker* v. *State*, 18 Okla. Cr. 661. This is a specific statute, the continuing validity of which is wholly unaffected by speculative doubts regarding other and irrelevant liquor legislation of Oklahoma. The dissenting judge was justified in reading the Act of 1917 as conclusively condemning the transaction which the carrier was seeking to consummate as an offense, were it subject to Oklahoma law.[3]

But the shipment of liquor in controversy was for delivery on the Fort Sill Reservation, that is, a place within the physical boundaries of Oklahoma but beyond its jurisdiction. It was stipulated between the parties that the purpose of the suit was to enable the Transit Company to transport and deliver the shipment to its destination in the Reservation. Such was the basis of the District Court's decree requiring the return of the shipment and enjoining interference with "delivery of said shipment to its destination" and no place else. This brings us to the second half of the question in this case: may the Transit Company, according to the law that rules such matters on the Reservation, lawfully deliver this liquor at Fort Sill? Of course all transactions on the Reservation are subject to regulation by Congress. Constitution, Art. IV, § 3, par. 2; see *Collins* v. *Yosemite Park Co.*, 304 U. S. 518; *Penn Dairies* v. *Milk Control Comm'n*, 318 U. S. 261; *Pacific Coast Dairy* v. *Dep't*, 318 U. S. 285. If it chooses, Congress may provide a rule of law which runs counter to the expressed dry policy of Oklahoma, and it may

[3] At least one other provision of Oklahoma legislation may well be found to outlaw the delivery of the shipment for the completion of which the carrier is seeking the aid of the federal court. Chapter 16, p. 16, § 1 of the Laws of 1939 makes it "unlawful for any person . . . to import, bring, transport, or cause to be brought or transported into the State of Oklahoma, any intoxicating liquor . . . without a permit first secured therefor as hereinafter provided." 37 O. S. A. § 41. Permits may be issued, under § 2 of that Act, only for the importation of alcohol for scientific, mechanical, medicinal or sacramental purposes. 37 O. S. A. § 42. Since the importation of the liquor here involved cannot possibly be said to fall within the classifications for which permits are granted, these statutory provisions as applied to the circumstances in this case are penal, and as such, may be applicable to the Reservation under the Assimilative Crimes Act. 54 Stat. 234, 18 U. S. C. § 468. See *infra*.

do so either specifically for Fort Sill or generally for all federal reservations. Congress has not done so. It has done the opposite. For nearly one hundred and fifty years most of the rules of life on national reservations have been controlled by the laws of the States in which these reservations are located. By the Act of March 3, 1825 (4 Stat. 115), Congress provided that when something is done on a federal reservation which is not made penal by the laws of Congress but which under State law, if the State had jurisdiction, would be punishable, the act should be equally punished as wrongful if committed on the reservation. In thus adopting the penal laws of the States as its code for lawful conduct on federal reservations within the States, Congress did not give to the States a free hand to impose the continuing process of State law-making on places over which the United States has jurisdiction. Only the laws of the States existing at the time when the Act of March 3, 1825 was enacted became operative on the reservations. *United States* v. *Paul*, 6 Pet. 141. And so, in view of the inevitable modifications and additions in the penal laws of the States, Congress has accommodated its adoption of those state laws, as the governing federal law, by bringing up to date from time to time its adoption for enforcement on federal reservations of the policies of the States which have penal sanctions. Accordingly, the Act of March 3, 1825, was in substance reenacted on April 5, 1866, 14 Stat. 12, 13, was carried forward in § 5391 of the Revised Statutes of 1878, was again reenacted on July 7, 1898, 30 Stat. 717; and became § 289 of the Federal Penal Code of 1910, 35 Stat. 1088, 1145. Since then and in relatively quick succession, Congress has three times brought still nearer the effective date of state penal laws applicable on federal reservations, to wit by the amendments of June 15, 1933, 48 Stat. 152; June 20, 1935, 49 Stat. 394; and June 6, 1940, 54 Stat. 234. The last Amendment now controls whereby

> "Whoever . . . shall do . . . any act or thing which is not made penal by any laws of Congress, but which if committed or omitted within the jurisdiction of the State, Territory, or district in which such place it situated, by the laws thereof in force on February 1, 1940, and remaining in force at the time of the doing . . . of such act or thing, would be penal, shall be deemed guilty of a like offense and be subject to a like punishment." 18 U. S. C. § 468.

The very important purpose of this legislation in the working of our dual system, as expounded after the fullest consideration heretofore given to this subject by this Court, bears repetition:

> "while the statute leaves no doubt where acts are done on reservations which are expressly prohibited and punished as crimes by a law of the United States, that law is dominant and controlling, yet, on the other hand, where no law of the United States has expressly provided for the punishment of offenses committed on reservations, all acts done on such reservations which are made criminal by the laws of the several States are left to be punished under the applicable state statutes. When these results of the statute are borne in mind it becomes manifest that Congress, in adopting it, sedulously considered the two-fold character of our constitutional government, and had in view the enlightened purpose, so far as the punishment of crime was concerned, to interfere as little as might be with the authority of the States on that subject over all territory situated within their exterior boundaries, and which hence would be subject to exclusive state jurisdiction but for the existence of a United States reservation. In accomplishing these purposes it is apparent that the statute, instead of fixing by its own terms the punishment for crimes committed on such reservations which were not previously provided for by a law of the United States, adopted and wrote in the state law, with the single difference that the offense, although punished as an offense against the United States, was nevertheless punishable only in the way and to the extent that it would have been punishable if the territory embraced by the reservation remained subject to the jurisdiction of the State." *United States v. Press Publishing Co.*, 219 U. S. 1, 9-10.[4]

Therefore the crucial question in relation to our present problem is whether any law of Congress has overridden the Oklahoma Act of 1917 which makes unlawful the transaction that the Transit Company seeks to consummate with the aid of an injunction issued by a federal court.

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[4] And see Webster, the sponsor of the bill in the Senate, in Register of Debates in Congress (Gales & Seaton, 1825) Vol. I, p. 338: "As to the third section [the precursor of the present Assimilative Crimes Act], it must be obvious, that, where the jurisdiction of a small place, containing only a few hundreds of people, (a navy yard for instance,) was ceded to the United States, some provision was required for the punishment of offences; and as, from the use to which the place was to be put, some crimes were likely to be more frequently committed than others, the committee had thought it sufficient to provide for these, and then to leave the residue to be punished by the laws of the state in which the yard, &c. might be. He was persuaded that the people would not view it as any hardship, that the great class of minor offences should continue to be punished in the same manner as they had been before the cession."

There is no such law. Long before the Twenty-first Amendment, Congress did provide that "The sale of or dealing in, beer, wine or any intoxicating liquors by any person in any post exchange or canteen or army transport or upon any premises used for military purposes by the United States, is hereby prohibited." Act of February 2, 1901, § 38, 31 Stat. 748, 758, 10 U. S. C. § 1350. Plainly, the purpose of this legislation is not to supplant social policies in regard to alcoholic liquor in the various States within which the many federal enclaves are located except to the extent of providing minimum regulations to restrict the free dealing in liquor at all Army posts including those within wet States. The specific barrier thus erected by Congress against the liberal liquor policies of some States should not now be used as a qualification of the generality of the Assimilative Crimes Statute in order to serve as a barrier against the prohibitory laws of other States. No such policy can be drawn from the Act of 1901—quite the opposite is implied. And assuming that the military could assert such a policy in the interest of Army morale, there is wholly lacking any manifestation that the Army deems it necessary for the morale of its officers that at Fort Sill conduct should be permitted which if committed in the surrounding territory of Oklahoma would offend its penal laws. So far as the War Department has indicated a policy, its policy like that of the Assimilative Crimes Statute is to adopt on military reservations the laws of their respective States. Thus, in reference to A. G. 250.1, § VI, par. 4 (1-20-43) of Circular No. 29 of the War Department, Jan. 25, 1943, provides: "Beer of an alcoholic content not in excess of 3.2 per centum by weight may be sold or dealt in upon any of the mentioned premises unless a State enactment of the State in which the premises are located prohibits the sale of or dealing in such beer throughout the entire State." And the Judge Advocate General has said that, "War Department policy does not favor sale of such [3.2] beer by exchanges in States where its sale is absolutely prohibited . . . ." Bulletin of the Judge Advocate General of the Army, July 1942, p. 100, § 310.

Even if there were more hypothetical doubt than the laws and decisions of Oklahoma make manifest as to the validity and vitality of the Act of 1917 and its applicability to the importation of the liquor shipment involved in this case, if the importation were into Oklahoma proper, such a contingency should be left for determina-

tion by appropriate proceedings in the state court to recover the liquor and not be made the basis for an injunction against the state law in the federal court. Since federal law here too turns on state law by adoption through the Assimilative Crimes Statute, the basis of our decision in *Penn Dairies v. Milk Control Comm'n, supra*, becomes relevant. Here, as in that case, there is an "absence of some evidence of an inflexible Congressional policy", 318 U. S. at 275, opposed to the policy expressed by the State. In this case as in that, we should therefore be slow to strike down state legislation by elaborate implications. The discretionary powers of equity particularly counsel against it. And even if there were more doubt than appears regarding the adoption of the Act of 1917 by the Assimilative Crimes Statute, whereby the delivery of the liquor by the Transit Company on the Reservation would constitute a misdemeanor, that doubt too should not be resolved against the law in such a proceeding as this for an injunction. That question although federal may also be litigated as part of the indicated state court suit, where the Attorney General may intervene and then come here if he chooses to assert whatever position the Government deems it appropriate to press.

In my view therefore it was an inequitable exercise of discretion to issue this injunction. Of course, "Equity does not demand that its suitors shall have led blameless lives." *Loughran v. Loughran*, 292 U. S. 216, 229. But where the relief sought is not as to something past and collateral, but where it is the very means, as is the case here, for completing an outlawed transaction, a court of equity should withhold its aid and not become the promoter of wrongdoing. The possible illegality of the seizure of the liquor by the Oklahoma enforcement officers is quite irrelevant to our problem. "A question of public policy is presented—not a mere adjudication of adversary rights between the two parties." *Weil v. Neary*, 278 U. S. 160, 171. The abstention which equity exercises, as it should here, under the short-hand phrase of the "clean hands doctrine" is not due to any desire to punish a litigant for his uncleanliness. "But the objection that the plaintiff comes with unclean hands will be taken by the court itself. It will be taken despite the wish to the contrary of all the parties to the litigation. The court protects itself." Mr. Justice Brandeis in *Olmstead v. United States*, 277 U. S. 438, 485. It is hardly seemly for a federal court to order the return of liquor seized with full knowledge by the court that the

carrier would use the liquor to share in the commission of a misdemeanor. The penal statute here applicable is a police regulation violation of which ought not to be furthered by a federal court. While its violation does not imply moral turpitude, Congress has required that army officers should also conform to the law of a State on which military reservations are located in matters that are outside military concern.